

IN THE UNITED STATES DISTRICT COURT

RALPH REED

PETITIONER

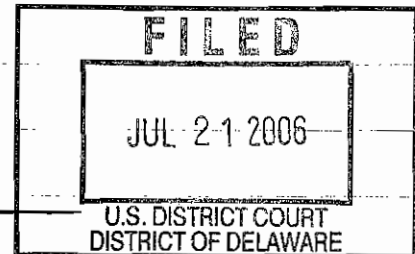
V.

No. 06 - 445

THOMAS L. CARROLL

D.C.C. WARDEN

RESPONDENT



1. Appendix To Petitioner
MEMORANDUM OF LAW
IN SUPPORT OF HABEAS CORPUS

DATE: 6-17-06

Delaware Correctional Center
1181 Paddock Road
Smyrna Delaware 19977

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1 trial will begin today and we estimate it will take
2 two weeks.

3 Do you know anything about this case through
4 personal knowledge, discussion with anyone, the news
5 media, or any other source?

6 Do you know the defendant or his friends or
7 relatives?

8 The State is represented by James W. Adkins,
9 a Deputy Attorney General. The defendant is
10 represented by Karl Haller.

11 Do you know the attorneys in this case or any
12 other attorney or employee in the Office of the
13 Attorney General or defense counsel?

14 Do you know any of the following persons who
15 might be called to testify as witnesses: Detective
16 James Fraley, Delaware State Police; Detective Robert
17 Hawkins, Delaware State Police; Detective Curt Brown,
18 Delaware State Police; Detective Keith Marvel,
19 Delaware State Police; Detective Brian Conlin,
20 Delaware State Police Troop 4; Sergeant Scott
21 Galbreath, Delaware State Police Troop 2; Corporal-
22 Ronald Voshell, Delaware State Police Troop 5;
23 Sergeant Steve Swain, Delaware State Police Troop 4;

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Official Court Reporter



1 Sharon Tull, Millsboro; Elroy Collick, Laurel,
2 Delaware.

3 Do you know the victim, Gregory Howard?

4 Do you have any bias or prejudice either for
5 or against the State or the defendant?

6 Do you have any religious or conscientious
7 reasons as to why you cannot serve as a juror in this
8 case?

9 Is there any reason why you cannot give this
10 case your undivided attention and render a fair and
11 impartial verdict?

12 Once again, this trial will begin today and
13 will last approximately two weeks. If your answers to
14 any of the above questions is yes or you cannot serve
15 through May 19th, please come forward.

16 THE COURT: Let me see counsel at the
17 sidebar.

18 (Whereupon, counsel approached the bench and
19 the following proceedings were had:)

20 THE COURT: It may be helpful that since the
21 State is not seeking the death penalty that we make
22 the jury panel aware of that.

23 MR. HALLER: Yes, I was going to ask that.

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Official Court Reporter

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OFFICER MICHAEL HOLCUMB - DIRECT

1 A. It was foggy. Officer Tyndall was the lead
2 car. I was following Officer Tyndall, proceeded
3 through the intersection and I happened to catch the
4 sight of a Bronco into a house to my right. So I
5 turned my car in and lit it up with my headlights.

6 Q. What did you find when you arrived?

7 A. When my headlights lit up the back of the
8 car, I could see what appeared to be bullet holes in
9 the back windshield.

10 Q. What did you do next?

11 A. I immediately approached the vehicle to see
12 if there were any victims inside.

13 Q. What did you see?

14 A. I found the lone occupant, the driver, seated
15 on the driver's seat, leaning over with his shoulder
16 and head resting on the passenger front seat.

17 Q. What did you do?

18 A. I reached in and grabbed his wrist for a
19 pulse. He had a pulse. He was struggling for breath
20 at that time.

21 Q. Was the car on or off at that point?

22 A. The car was running. It was in gear.

23 Q. Did you do anything to get the car out of

OFFICER MICHAEL HOLCUMB - CROSS

1 A. No. That's who came down to me at the second
2 scene. I don't know who the first detective was that
3 showed up.

4 Q. It could have been somebody other than
5 Detective Keith Marvel?

6 A. Yes.

7 MS. TSANTES: No further questions.

8 THE COURT: Mr. Haller?

9 CROSS-EXAMINATION

10 BY MR. HALLER:

11 Q. What was the route you took to Sixth and
12 Crockett?

13 A. We were at the station, which is on the
14 corner of Poplar and Mechanic Street. We came up
15 Mechanic Street to West Street, made a right, then a
16 left on Sixth Street. It's Townsend there, which
17 brings you out on Sixth Street and continued west over
18 to Crockett.

19 Q. How would you describe the weather?

20 A. Foggy.

21 Q. Was it raining or misting?

22 A. I believe it was misting a little bit.

23 Q. When you got to the corner of Seventh and

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Official Court Reporter

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YVONNE DeSHEILDS - DIRECT

1 Q. And what were you doing that night at about
2 those times, where were you? Where did you go? If
3 you can tell us what you were doing?

4 A. I had been in front of the store.

5 Q. The deli?

6 A. The deli. Then I crossed over from the deli
7 and I was standing on the walk in front of the house
8 of Herman Dark.

9 Q. Does Herman Dark have a nickname?

10 A. Muddy.

11 Q. What were you going over to Muddy's place?

12 A. I had been up the street and I had bought
13 something to drink. I had came down there -- can I
14 say this without getting in trouble?

15 Q. You say whatever the truth is.

16 A. -- to purchase drugs. I was standing on the
17 sidewalk when the confusion went on.

18 Q. Can you tell us where you were and what
19 position you were in and what you saw?

20 A. I was standing on the sidewalk. I started in
21 Herman's when I realized that there had been --
22 something was going on. Then I heard someone say,
23 saying, saying something like: I don't believe you'll

YVONNE DeSHEILDS - DIRECT

1 do it.

2 Q. Was that a male voice or female voice?

3 A. I don't know. It sounded like female voices
4 to me. Then I heard a shot, you know.

5 Q. Where were you when you heard these voices
6 and a shot?

7 A. Standing in front of the house, Herman Dark's
8 house. Then I started on the porch. That's when I
9 heard the shots and I got down on the porch.

10 Q. When you heard the voices, did you look over
11 to where the voices were coming from?

12 A. Yes.

13 Q. Where were the voices coming from, where did
14 you look?

15 A. Down the creek.

16 Q. Did you look --

17 A. In front of the bench.

18 Q. Did you see any vehicle there at the entrance
19 way to Little Creek Apartments?

20 A. A Blazer.

21 Q. Was that all one color, two-tone, how would
22 you describe it?

23 A. Two-tone: Burgundy and gray.

DAVID WASHINGTON
Official Court Reporter

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1 Q. Had you ever seen that vehicle before?

2 A. Yes, sir.

3 Q. Had you seen that vehicle that night before?

4 A. Yes, sir.

5 Q. Where did you see that vehicle before you saw
6 it at the entrance way to Little Creek Apartments?

7 A. He passed me on street by the graveyard.

8 Q. And about how much before these noises that
9 you heard did this two-tone Blazer, as you call it,
10 pass you?

11 A. 20 minutes.

12 Q. Had you ever seen that vehicle before that
13 night?

14 A. Yes, sir.

15 Q. All right. For how long a period of time
16 before that night had you been seeing that vehicle in
17 the area of Little Creek Apartments?

18 A. Excuse me? I didn't understand what you
19 said.

20 Q. Well, I'm not sure I know how else to phrase
21 it. For how long a period of time, a few days, a
22 week, six months, how long had you been seeing that
23 vehicle?

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YVONNE DeSHEILDS - DIRECT

A. That vehicle, I seen it a week prior to this.

Q. A week or more?

A. Yes.

Q. And how many times a week?

A. Once, sometimes twice.

Q. Did you ever acknowledge the person who you had see in that vehicle the times that you saw him in the vehicle?

A. Yes.

Q. How?

A. He wanted to buy drugs.

Q. You don't understand what I mean. Did you ever wave to the person in that vehicle?

A. He always spoke to me.

Q. How did he speak to you?

A. He always just threw his hands up.

Q. What did you do?

A. Speak back.

Q. You said he was looking for drugs. Do you have any personal knowledge that the person in this vehicle was looking for drugs?

A. Yes.

Q. All right. How do you know that person was

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Official Court Reporter

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YVONNE DeSHEILDS - DIRECT

1 looking for drugs?

2 A. He has asked me before.

3 Q. Was this a male or female?

4 A. Male.

5 Q. White male, black male?

6 A. White male.

7 Q. Let's go back. Are you uncomfortable at all?

8 A. A little.

9 Q. Just try to stay calm. I want to take you
10 back to when you were on Muddy's porch, okay?

11 A. Okay.

12 Q. Now, what's the first thing that you hear?

13 A. Voices.

14 Q. As this is casual conversation, argument, how
15 would you characterize the voices?

16 A. It was more like something was getting ready
17 to happen. I heard this: I don't believe you'll do
18 it or --

19 Q. Did you look over there when you heard that?

20 A. Yes.

21 Q. Did you see the vehicle that you have been
22 talking about?

23 A. Yes.

YVONNE DeSHEILDS - DIRECT

1 Q. Where was that vehicle?

2 A. Coming up -- well, it was sitting still in
3 the front, coming up out of the entrance of Little
4 Creek.

5 Q. Sitting still at the entrance of Little
6 Creek?

7 A. Yes.

8 Q. Was there anybody you recognized over there
9 by that vehicle, by the vehicle on the outside of the
10 vehicle?

11 A. Ralph.

12 Q. Ms. DeShields, you need to say the name and
13 say it loud?

14 A. Ralph Reed.

15 Q. And what did you see Ralph Reed doing at the
16 Bronco II?

17 A. He was pointing a gun.

18 Q. What did you hear or see next?

19 A. Two ladies sitting on the bench, another guy
20 standing up.

21 Q. Do you know the names of those people or
22 their nicknames?

23 A. Sarah is one of them. I don't know the other

YVONNE DeSHIELDS - DIRECT

1 the envelope. I am going to take this out of the
2 paper bag. I want you to look at that.

3 Have you ever seen this before?

4 A. Yes.

5 Q. Where did you see that?

6 A. On the sidewalk on the curb.

7 Q. On the sidewalk where?

8 A. Where the shooting occurred.

9 Q. Pardon me?

10 A. Where the shooting occurred.

11 Q. And did you pick it up?

12 A. Yes.

13 Q. And when was this, to the best of your
14 recollection, after the shooting?

15 A. Something like a couple of days.

16 Q. What did you do with it?

17 A. I gave it to Mr. Stewart.

18 Q. Who is Mr. Stewart?

19 A. Larry Stewart, who owns the deli.

20 Q. Why did you give it to him, do you recall?

21 A. Excuse me?

22 Q. Do you remember why you gave it to him?

23 A. Because I didn't know -- I gave it to him. I

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Official Court Reporter

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YVONNE DeSHIELDS - DIRECT

1 knew they had been down to the store looking for me.
2 Anyway, I just gave it to him. He gave it to his
3 wife.

4 MR. ADKINS: Excuse me a moment.

5 (Pause.)

6 BY MR. ADKINS:

7 Q. Did you see Larry Stewart give it to his
8 wife, Dolla?

9 A. No. I gave it to Larry. I did not see him
10 give it to his wife. I did give the bullet to him.

11 MR. ADKINS: Excuse me.

12 (Pause.)

13 BY MR. ADKINS:

14 Q. That shell casing you just identified picking
15 up on the sidewalk --

16 A. Yes.

17 Q. -- does that look in the same condition as
18 when you picked it up off the sidewalk?

19 A. As far as I know.

20 Q. Did it look the same?

21 A. I didn't know it was bent up like that. I
22 didn't pay it that much attention.

23 Q. Well, look at it again. I mean, how many

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1 shell casings have you ever picked up on the sidewalk?

2 A. How many?

3 Q. Have you ever picked up any shell casings on
4 the sidewalk at Little Creek other than that one?

5 A. No.

6 Q. ~~Does that look about the same as when you~~
7 ~~picked it up?~~

8 A. Yes

9 MR. ADKINS: I have no further questions.

10 THE COURT: Mr. Haller.

11 THE WITNESS: Oh Lord Jesus.

12 CROSS-EXAMINATION

13 BY MR. HALLER:

14 Q. You talked to the police last week?

15 A. Yes, sir.

16 Q. And where did you do that?

17 A. The Laurel Police Department.

18 Q. And how long did you talk to them?

19 A. I had an appointment for 1:00. I was
20 there -- I got there quarter of. And I got out of
21 there about 2:30.

22 Q. So you talked to them for about an hour
23 and-a-half?

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Official Court Reporter

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1 A. I want -- I don't know if I drank that many
2 that afternoon.

3 Q. Tell us how many you drank?

4 A. Maybe a couple. I wasn't intoxicated,
5 believe me.

6 Q. Now, that evening did you drink any more?

7 A. No, I had not.

8 Q. All right. You were going down to the scene
9 to get what? Why did you go down to the scene?

10 A. I had been down there to purchase drugs.

11 Q. That day?

12 A. That evening. It was foggy.

13 Q. Had you purchased any drugs that evening?

14 A. Yes.

15 Q. Did you use the drugs that evening?

16 A. No, I didn't. I didn't have a chance to.

17 Q. What drugs was it that you purchased?

18 A. Crack cocaine.

19 Q. Did you go down there to get any food?

20 A. No, I didn't.

21 Q. Did you go down there to get a bottle?

22 A. Get a who, what?

23 Q. A bottle of liquor or vodka?

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Official Court Reporter

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YVONNE DeSHIELDS - CROSS

1 A. They cannot sell alcohol at the store, in the
2 deli.

3 Q. Why were you going to Mr. Muddy's?

4 A. I went over there to Muddy's because earlier
5 I had borrowed some money from Herman Dark and I did
6 go to pay him back that evening.

7 Q. It was foggy that evening?

8 A. Yeah.

9 Q. ~~Moderately foggy, very foggy, mildly foggy?~~

10 A. The fog had lifted.

11 Q. It lifted?

12 A. Yes.

13 Q. It wasn't foggy?

14 A. It was foggy, but it had been lifting.

15 Q. You say you saw Ralph that night?

16 A. Yes.

17 Q. There were three other people there?

18 A. Yes.

19 Q. Do you know who they were?

20 A. Not the young lady.

21 Q. You know one of them?

22 A. Yes.

23 Q. Do you know the other two?

YVONNE DeSHIELDS - CROSS

1 A. I know them by seeing them. I know the Bacon
2 boy.

3 Q. You are saying you could identify all three
4 of the others?

5 A. Yes, I can.

6 Q. How far were they from Ralph?

7 A. As close as I am to him.

8 Q. You are indicating the court reporter. And
9 ~~that would be maybe three or four feet?~~

10 A. Yes.

11 Q. Can you describe them for us?

12 A. One called Sarah, she's about four something.
13 She wear her hair tapered cut.

14 Q. Sarah?

15 A. Yes.

16 Q. She is a younger woman?

17 A. She's a young lady.

18 Q. And who else?

19 A. The other young girl, I don't know her name.

20 Q. What about -- there was a man?

21 A. Bacon.

22 Q. Can you describe the Bronco for us?

23 A. Burgundy and I guess gray, some kind of gray

YVONNE DeSHIELDS - CROSS

1 in it. Streaked. It was burgundy with gray or it
2 looked like gray to me.

3 Q. Was it clean or was it dirty?

4 A. It was clean.

5 Q. What kind of tags did it have on it?

6 A. Maryland.

7 Q. You indicated that you thought you heard
8 female voices?

9 A. Yes.

10 Q. And where did they come from?

11 A. Over in the area where the Blazer was at.

12 Q. Where the three people were?

13 A. Four people, Ralph.

14 Q. Was there anybody else around the corner?

15 A. Not exactly standing where they were.

16 Q. No, but standing at the corner?

17 A. Not on the corner, no.

18 Q. Standing by the deli?

19 A. No, down in the creek, the Little Creek
20 Apartments.

21 Q. While you were at Muddy's could you see other
22 people?

23 A. Yes, there was other people out there.

DAVID WASHINGTON
Official Court Reporter

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SARAH HANDY - DIRECT

1 night of Tuesday, November 23rd. Do you recall that
2 night at Little Creek Apartments?

3 A. Yes.

4 Q. Say between 10:00 o'clock and 11 o'clock at
5 night, where were you on that date?

6 A. In my bedroom.

7 Q. Do you have a first floor or second-floor
8 apartment?

9 A. Second.

10 Q. And what building is your apartment in?

11 A. 107.

12 Q. That's the 100 Building?

13 A. Yes.

14 Q. That 100 Building faces right on Seventh
15 Street just across from Little Creek Deli?

16 A. Yes.

17 Q. And out of your bedroom window can you
18 clearly see the Little Creek Deli?

19 A. Yes.

20 Q. You can also clearly see the entrance way of
21 the Little Creek Apartments?

22 A. Yes.

23 Q. On that night at around that time, did you

DAVID WASHINGTON
Official Court Reporter

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SARAH HANDY - DIRECT

1 hear anything unusual?

2 A. Yes, I heard some girls fussing. Then after
3 that, I heard some -- four shots.

4 Q. When you heard some fussing, what did you do?

5 A. I was looking out the window.

6 Q. And you say you heard shots?

7 A. Yes.

8 Q. When did you hear the shots, before or after
9 the fussing?

10 A. It was before. It was right after there was
11 arguing.

12 Q. You heard shots right after the arguing?

13 A. Yes.

14 Q. When you heard the shots, were you looking
15 out the window?

16 A. Yes.

17 Q. What did you see?

18 A. I saw someone standing with a gun in their
19 hand and then the shots, they had went off. But the
20 truck went on the side of the sidewalk.

21 Q. You saw someone with a gun in their hand and
22 you saw shots go off; is that correct?

23 A. Yes.

SARAH HANDY - DIRECT

1 Q. Did you see any vehicle down there?

2 A. There was a Bronco truck, I think it was.

3 Q. What did you see that Bronco truck do?

4 A. It was speeding out and it went on the
5 sidewalk.

6 Q. Do you recall hearing any noise when it sped
7 off?

8 A. Yes.

9 Q. What did you hear?

10 A. It was speeding trying to get away.

11 Q. Now, that person that you saw with the gun
12 shooting at the Bronco, have you ever seen that person
13 before?

14 A. Yes.

15 Q. And if you saw that person again, do you
16 think you would recognize that person?

17 A. Yes.

18 Q. I want you to look around this courtroom and
19 see if you see that person?

20 A. Right there. (Witness indicating.)

21 MR. ADKINS: If the record would please
22 indicate that the witness has pointed at the
23 defendant.

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JUANITA HOPKINS - CROSS

1 THE COURT: All right. Mr. Haller.

2 CROSS-EXAMINATION

3 BY MR. HALLER:

4 Q. You realize you are under oath now, Ms.
5 Hopkins?

6 A. Yes.

7 Q. Going back to the night when you saw that man
8 in the street, was that Ralph?

9 A. That's who I thought it was. I mean, yes, it
10 was foggy and I wasn't sure. I wasn't really sure,
11 but he fit the description. It looked like the
12 height.

13 Q. Well, is your answer: It wasn't Ralph, it
14 might have been Ralph or it was Ralph, what's your
15 answer today under oath looking back on who you saw
16 and what you learned that night?

17 A. I mean, I don't know how I'm supposed to say
18 yes to it, you know?

19 Q. You are not sure it wasn't Ralph that you saw
20 that night?

21 A. I'm almost certain, yes, but there is just
22 that little bit of doubt that, no, I'm not sure.

23 Q. Okay.

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RESHAWN JEFFERSON - CROSS

1 (Whereupon, the jury returned to the
2 courtroom.)

3 THE COURT: Mr. Haller.

4 MR. HALLER: Thank you.

5 CROSS-EXAMINATION

6 BY MR. HALLER:

7 Q. On November 23rd when you were driving by the
8 apartments, you looked and saw the Bronco?

9 A. Yes.

10 Q. Who was the closest person to the Bronco?

11 A. Ralph.

12 Q. And he was within touching distance of the
13 Bronco, he could touch it?

14 A. Like one to two feet, yeah.

15 Q. Who were the two next closest people to the
16 Bronco?

17 A. I don't know.

18 Q. Well, was there anybody within five feet of
19 the Bronco?

20 A. I don't know who they were. I can't say. -It
21 was too foggy. There was quite a few people outside.

22 Q. So there could have been other people, say,
23 within five feet of the Bronco?

RESHAWN JEFFERSON - CROSS

1 Q. You don't know any of them, who they were?

2 A. No.

3 Q. Weren't there two girls and a guy close to

4 Ralph?

5 A. Excuse me?

6 Q. Weren't there two girls and a guy close to

7 Ralph?

8 A. I don't know.

9 Q. You don't know?

10 A. No.

11 Q. Do you know who the triplets are?

12 A. I heard of them. I don't know their names.

13 Q. Did you see any of them that night out there?

14 A. No.

15 Q. Do you know if you saw Ralph with the gun

16 that night?

17 A. I didn't see no gun.

18 Q. Did you ever see Ralph with a gun?

19 A. No.

20 Q. Did you go to the police or did the police

21 come to you?

22 A. The police came to me.

23 Q. When did they do that?

DAVID WASHINGTON
Official Court Reporter

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~~Q-178~~

everything he had on was black.

2 Q. Did she describe Ralph Reed?

3 A. Yes, she described him as being a tall, slim
4 black male.

5 Q. Do you recall the interview that you
6 conducted last week at Laurel Police Department with
7 Ms. Kiesha Dixon?

8 A. Yes, ma'am.

9 Q. Do you remember asking her similar questions
10 as to what Ralph looks like and what he was wearing on
11 November 23rd?

12 A. Yes.

13 Q. Do you recall what her answer was last week?

14 A. Basically the same. She said it was foggy
15 that night. She couldn't exactly recall because it
16 had been a few months earlier.

17 MS. TSANTES: Thank you, Detective. I have
18 no further questions.

19 THE COURT: Mr. Haller?

20 MR. HALLER: No questions.

21 THE COURT: You may step down.

22 (Witness steps down.)

23 THE COURT: Sidebar, 3507.

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1 was called as a witness by and on behalf of the State
2 of Delaware and, having been first duly sworn, was
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS TSANTES:

6 Q. Good afternoon, Ms. West.

7 A. Hi.

8 Q. Your friends call you something other than
9 Sharnelle?

10 A. Dutch.

11 Q. Do you know Mashika Williams?

12 A. Yes.

13 Q. How do you know Mashika?

14 A. She's my best friend.

15 Q. What do you call her?

16 A. Sheik.

17 Q. Do you also know Daren Bacon?

18 A. Yes.

19 Q. How long have you known Daren?

20 A. For about two or three years.

21 Q. Do you also know Ralph Reed?

22 A. Yes.

23 Q. How do you know Ralph?

DAVID WASHINGTON
Official Court Reporter



A-25

1 A. He's friends with my cousin, Kenyon.

2 Q. How long have you known Ralph Reed?

3 A. About a year.

4 Q. Are you social with him?

5 A. Yes.

6 Q. Hang out with him?

7 A. Yes.

8 Q. Where do you live?

9 A. 122 Tull Drive, Seaford, Delaware.

10 Q. Back in November of 1999, where were you
11 living?

12 A. 611 Little Creek Drive.

13 Q. In Little Creek Apartments?

14 A. Yes.

15 Q. Back on November 23rd, 1999, did you meet up
16 with Sheik after she got off of work at Little Creek
17 Apartments?

18 A. Yes.

19 Q. Were you hanging out with her?

20 A. Yes.

21 Q. At some point later in the evening did you
22 meet up with your friend, Daren, and with Ralph?

23 A. Yes.

DAVID WASHINGTON
Official Court Reporter

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SHARNELLE L. WEST - DIRECT

1 Q. Where did you meet them?

2 A. They were out in Little Creek.

3 Q. Where did you see them?

4 A. Probably near the 300 Building. I'm not
5 sure.

6 Q. At some point were you hanging near the
7 Little Creek Deli or at the entrance way of the Little
8 Creek Apartments with Sheik, Daren and with Ralph?

9 A. Yes.

10 Q. Where in that entrance way were you hanging
11 out?

12 A. At first we were near the bench.

13 Q. By bench, can you describe for the jury where
14 you mean?

15 A. The bench in front of the mailboxes.

16 Q. Is that right by the 100 Building or the 200
17 Building?

18 A. The bench is by the 300 Building.

19 Q. And at some point later did you move from the
20 300 Building and go closer up to the entrance way?

21 A. Yes, we were at the green box.

22 Q. Outside of which apartment is the green box?

23 A. It's like between the 100 and 200 Building,

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Official Court Reporter



A-27

SHARNELLE L. WEST - DIRECT

1 more behind the 200 Building.

2 Q. And when you say behind, do you mean on the
3 street side in terms of Seventh Street or do you mean
4 the parking lot?

5 A. The street side.

6 MS TSANTES: May I have State's Exhibit No.

7 3.

8 BY MS TSANTES:

9 Q. State's Exhibit 3 shows a green box there.
10 It is circled. Is that the green box that you were
11 hanging out by?

12 A. Yeah.

13 Q. And who was with you when you were on the
14 green box?

15 A. Sheik and Daren.

16 Q. Where was Ralph?

17 A. He was like at the corner of the apartments.

18 Q. Did you see Ralph doing anything at the
19 corner of the apartments?

20 A. No. Not really, no.

21 Q. Was Ralph by himself or was he standing in
22 one place at the corner of the apartments?

23 A. Excuse me?

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Official Court Reporter

A-28

SHARNELLE L. WEST - DIRECT

1 Q. What was Ralph doing by the corner of the
2 apartments?

3 A. Just standing there.

4 Q. Did you see him talking to anybody?

5 A. When do you mean?

6 Q. Okay. Let me back up a little bit and give
7 you a time frame. When you were on the green box with
8 Daren and Sheik, was Ms. Dolla's door or doors still
9 open?

10 A. Yeah. I think she was getting ready to
11 close.

12 Q. Do you know what her regular closing time was
13 back in November?

14 A. It may have been eleven.

15 Q. Could it have been ten?

16 A. Ten or eleven.

17 Q. Who else was outside in that area? You said
18 Ralph was by the entrance way at that time?

19 A. Yes.

20 Q. Who else did you see outside?

21 A. Reshawn. I don't know. Someone was on the
22 phone.

23 Q. Do you know who that person was?

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 A-29

SHARNELLE L. WEST - DIRECT

1 A. No. It was a girl.

2 Q. Did you get anything to eat that night?

3 A. I didn't, no.

4 Q. Did you see Ralph or Daren get something to
5 eat that night?

6 A. Yes.

7 Q. Was it before or after the store closed?

8 A. After. It was like during the time she was
9 closing.

10 Q. During closing time?

11 A. . Yes.

12 Q. Where did you see Ralph and Daren eat what
13 they got?

14 A. Just right outside, like between the fence
15 and Dolla's parking lot.

16 Q. What were you doing, what were you and Sheik
17 doing when Daren and Ralph were getting some food?

18 A. I don't know. We were just standing outside,
19 just standing around.

20 Q. Other than seeing Ralph get something to eat
21 at Ms. Dolla's store around closing time, did you see
22 Ralph doing anything?

23 A. He was -- I don't know, playing with a pole.

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~~A-25~~ ~~A-26~~ A-30

SHARNELLE L. WEST - DIRECT

1 Q. Do you remember Ralph going up to any cars
2 that night?

3 A. Yes.

4 Q. How many cars did you see Ralph go up to that
5 night?

6 A. Like one or two.

7 Q. Do you remember what any of those cars looked
8 like?

9 A. I remember a white pickup, maybe, and like a
10 red and white truck.

11 Q. What would you see Ralph do when he would go
12 up to these cars?

13 A. I wasn't watching him like that.

14 Q. You saw him go up to at least two cars that
15 evening?

16 A. Yes.

17 Q. This was before you heard any gunshots?

18 A. Yes.

19 Q. At some point did you hear gunshots?

20 A. Yes.

21 Q. Where were you when you heard those gunshots?

22 A. At the green box. I wasn't sitting on the
23 green box, but I was standing like a couple feet in

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~~A-31~~ ~~A-31~~
A-31

SHARNELLE L. WEST - DIRECT

1 front of it.

2 Q. And where was Daren?

3 A. He was sitting on the green box.

4 Q. Was anybody else sitting on the green box?

5 A. Sheik.

6 Q. Was Ralph sitting on the green box?

7 A. No.

8 Q. Where was Ralph?

9 A. At the stop sign.

10 Q. Did you see Ralph up near anything at the
11 stop sign?

12 A. Yes.

13 Q. What was he near?

14 A. The red and white truck.

15 Q. Could you tell who was in the red and white
16 truck?

17 A. No.

18 Q. Where was Ralph and how far away from the red
19 and white truck was Ralph when you heard the shots?

20 A. When I heard the shots, I went around in
21 front of the building, between the two buildings.

22 When I heard the tire squeal and everything, he was at
23 the sidewalk still at the stop sign.

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~~A-32~~ A-32

SHARNELLE L. WEST - DIRECT

1 Q. Was there anybody else near him at that
2 point?

3 A. I can't recall.

4 Q. Did you see anybody else?

5 A. No.

6 Q. Let me ask you this: Do you know Kenyon
7 Horsey?

8 A. Yes.

9 Q. Did you see Kenyon there at the entrance way?

10 A. No.

11 Q. Did you hear the shots first or the tires
12 squealing, do you remember?

13 A. I'm not sure.

14 Q. How many shots did you hear?

15 A. About four, four or five.

16 Q. What kind of noises did you hear coming from
17 the car?

18 A. The tires squealing.

19 Q. Did you see which way the car was going?

20 A. No. As soon as we heard the shots and the
21 tires squealing, we ran around, you know, between the
22 two buildings. So I didn't see which direction the
23 car went.

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Official Court Reporter

~~A-33~~ ~~A-33~~ A-33

SHARNELLE L. WEST - DIRECT

1 Q. And when you say "we ran around", who did you
2 run with?

3 A. Sheik and Daren.

4 Q. Did you see Ralph after you heard the shots?

5 A. You mean right away or later on?

6 Q. Let's talk about both. Did you see Ralph
7 right away when you heard the shots?

8 A. No.

9 Q. How about afterwards, did you see him?

10 A. Yes.

11 Q. Where did you see him?

12 A. At the 600 Building.

13 Q. Between hearing the shots and seeing him at
14 the 600 Building, had you seen him anywhere else?

15 A. No.

16 Q. What did Ralph look like when you saw him by
17 the 600 building?

18 A. He just, like, had a -- I don't know. A
19 puzzled look on his face maybe.

20 Q. Did he look different than normal?

21 A. He just looked puzzled. I mean, I guess
22 that's different from normal.

23 Q. Do you remember what Ralph was wearing?

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~~A-34~~ ~~A-34~~

SHARNELLE L. WEST - DIRECT

1 A. A black jacket.

2 Q. Do you remember if the black jacket had a
3 hood?

4 A. It had a hood.

5 Q. When you saw Ralph up at the 600 Building was
6 he inside or outside?

7 A. He was inside my apartment.

8 Q. Whose apartment?

9 A. My apartment.

10 Q. How did Ralph get inside of your apartment?

11 A. The door was unlocked.

12 Q. Had Ralph ever been in your apartment before?

13 A. Yes.

14 Q. Where was Ralph inside of your apartment when
15 you came in?

16 A. He was coming down the hallway.

17 Q. Where was he coming from?

18 A. I suppose my bedroom. In that apartment the
19 bathroom is in the bedroom. So the bathroom is in the
20 bedroom.

21 Q. The bedroom/bathroom, same area?

22 A. Right in the same spot.

23 Q. Was he with anybody?

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A-35

B-171

SHARNELLE L. WEST - DIRECT

1 A. No.

2 Q. Did you and Ralph have a conversation?

3 A. It wasn't a conversation. I just told him,
4 you know, that he had to leave. I was about to leave
5 and lock my door and that someone hit a house down the
6 street. I was going to lock my door.

7 Q. Did Ralph leave your apartment?

8 A. Yes.

9 Q. Did you see him leave with anyone?

10 A. No.

11 Q. Was he inside of your apartment -- when you
12 walked in your apartment, was anyone other than Ralph
13 in your apartment?

14 A. No. My sister was there, but she was
15 sleeping.

16 Q. Were you with anyone or by yourself when you
17 went back to your apartment?

18 A. I was by myself.

19 Q. When Ralph went to leave your apartment, was
20 there anybody in your entrance way?

21 A. I think Daren may have been standing in the
22 building.

23 Q. Was anyone else there?

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~~1-24~~ ~~A-36~~ A-36

B-172

SHARNELLE L. WEST - DIRECT

1 A. I can't recall.

2 Q. What happened to your friend, Sheik, at that
3 point? Was she with you?

4 A. She was still out, you know, where the crowd
5 of people was.

6 Q. Did Ralph leave your apartment when you asked
7 him to?

8 A. Yes.

9 Q. Did you leave your apartment?

10 A. Yeah.

11 Q. Did you leave with anyone?

12 A. No.

13 Q. Where did you go when you left your
14 apartment?

15 A. I went to Sharmelle's house.

16 Q. Where is that?

17 A. The 30th Building.

18 Q. Why were you going over to Sharmelle's house?


19 A. I left my purse there.

20 Q. Did you go get your purse from that person's
21 apartment?

22 A. Yes.

23 Q. What did you do after that?

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A-37 

SHARNELLE L. WEST - DIRECT

1 A. I got my purse and I called Gailyn to see if
2 she was picking me up.

3 Q. Who is Gailyn?

4 A. She is Kenyon's girlfriend.

5 Q. Where does Gailyn live?

6 A. At the time she lived in Seaford.

7 Q. You had a conversation with Gailyn. Without
8 getting into what Gailyn said to you, did you make
9 arrangements to stay at Gailyn's place that evening?

10 A. Those arrangements were already made.

11 Q. Did she come and pick you up?

12 A. No.

13 Q. How did you get to Gailyn's apartment?

14 A. Kenyon.

15 Q. You said that Kenyon was not in the entrance
16 way at Little Creek Apartments when the shots went
17 off. Where did you find Kenyon that night?

18 A. He was at his grandmother's on Center Street.

19 Q. How did you get to his grandmother's house on
20 Center Street?

21 A. I walked.

22 Q. Were you by yourself or did someone walk with
23 you?

DAVID WASHINGTON
Official Court Reporter

4-38 A-38

SHARNELLE L. WEST - DIRECT

1 A. Someone walked with me.

2 Q. Who walked you over there?

3 A. Jr.

4 Q. Do you recall how you got from the 600
5 Building over to Center Street?

6 A. Walked.

7 Q. Can you give me some directions in terms of
8 which direction? Tell me which direction you traveled
9 to get to Center Street?

10 A. I walked down the sidewalk in front of the
11 200 Building and a 100 Building, I believe. Jr. may
12 have been standing at the 100 Building then and asked
13 me if he -- if I wanted him to walk me around there.
14 I said, yes, and we went around on to Center Street.

15 Q. Did you see anybody when you were walking
16 towards Center Street?

17 A. No.

18 Q. Did you see anybody once you got on Center
19 Street?

20 A. I saw Pie and Kenyon.

21 Q. Pie, does he have another name other than
22 that nickname?

23 A. Pie is the nickname.

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 A-39

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SHARNELLE L. WEST - DIRECT

1 Q. Do you know his real name?

2 A. I think it's Oscar.

3 Q. You saw Kenyon?

4 A. Yeah.

5 Q. Did you see anyone else?

6 A. No.

7 Q. Did you see Ralph at all after you saw him
8 leave your apartment?

9 A. No.

10 Q. Did you see him on Center Street afterwards?

11 A. No.

12 Q. Ms. West; do you remember talking to the
13 Delaware State Police back in November, on
14 November 26, 1999, had an interview which took place
15 at the Delaware State Police Troop No. 5?

16 A. Yes.

17 Q. Did you speak with Detective Fraley back in
18 November of 1999?

19 A. Yes.

20 Q. Did you speak with him voluntarily?

21 A. Yes.

22 Q. Did you tell him the truth?

23 A. Yes.

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Official Court Reporter

~~A-40~~ A-40

B-176

SHARNELLE L. WEST - DIRECT

1 Q. What did you tell him that day?

2 A. I told --

3 Q. Did he ask you questions about what happened
4 that night?

5 A. Yes.

6 Q. What did you tell him?

7 A. I told him where I was, what happened, what I
8 did, and that's it.

9 Q. Do you remember coming to the Laurel Police
10 Department last week and speaking with Detective
11 Fraley again at the Laurel Police Department with
12 Mr. Adkins and myself?

13 A. Yes.

14 Q. Did you speak to us voluntarily?

15 A. Yeah.

16 Q. And did you tell us the truth?

17 A. Yes.

18 Q. Do you recall what you said on that day?

19 A. Yeah.

20 Q. Just in a nutshell, what did we talk about
21 that day?

22 A. We talked about Ralph being at Little Creek
23 and what he did and where was Sheik, was where Daren.

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~~A-41~~ ~~A-41~~

B-177

SHARNELLE L. WEST - DIRECT

1 It was the same thing we talked about at the police
2 barracks.

3 Q. When those shots were fired you were standing
4 next to the green box?

5 A. I was standing in front, in front of the
6 green box.

7 Q. You say in front. You are talking about the
8 Seventh Street side or the apartment side, by the
9 street or by the apartment or by the entrance way to
10 Little Creek, where? Do you want the pictures to show
11 us?

12 A. This is like the green box. I'm standing
13 right in front of the green box.

14 Q. Are you closest to the street at that point
15 or are you closer to the entrance way to Little Creek
16 Apartments?

17 A. Closer to the street. My back is to the
18 entrance.

19 Q. So your back is to the entrance?

20 A. Yes.

21 Q. What do you do when you hear the shots and
22 the squealing tires?

23 A. When we heard the squealing tires, I turned

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Official Court Reporter

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B-178

SHARNELLE L. WEST - DIRECT

1 and went in between the 100 and 200 building because
2 people were running from like the 100 Building. You
3 were not going in front of the 200 Building.

4 Q. Which way were the shots coming from?

5 A. Behind me.

6 Q. So, in other words, from the entrance way at
7 Little Creek Apartments?

8 A. Yes.

9 Q. Where you saw Ralph standing next to that
10 car?

11 A. Yes.

12 Q. Didn't you look when you heard the shots to
13 see what was going on?

14 A. No.

15 Q. Why didn't you look?

16 A. I didn't want to, I guess.

17 Q. Didn't you see who shot that man, Ms. West?

18 A. No, I did not.

19 Q. I want to take you back to the conversation,
20 the short discussion you had with Ralph when you found
21 him at your apartment after the shooting, okay?

22 A. Yes.

23 Q. Did you tell Ralph something had happened

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Official Court Reporter

A-43 A-43

B-181

SHARNELLE L. WEST - DIRECT

1 girlfriend's house and were upset, upset that you saw
2 Ralph Reed kill that man? That's why --

3 A. No.

4 Q. Weren't you upset when you got to the
5 girlfriend's house?

6 A. Yes.

7 Q. Weren't you upset because Ralph Reed shot
8 that man?

9 A. I didn't see him shoot the man. I can't say
10 that.

11 Q: Didn't you tell Kenyon he shot that man?

12 A. No, because I didn't see him shoot him.

13 Q. You knew he shot him, didn't you?

14 A. I mean, m that's what was said.

15 MR. HALLER: Your Honor, I object.

16 THE COURT: Sustain. The last question and
17 answer are stricken.

18 BY MS TSANTES:

19 Q. What did you and Kenyon talk about on the
20 ride to your girlfriend's house?

21 A. He said someone had been shot and ran into a
22 house. I said I heard the same thing, I was outside.
23 That's it. We talked about other things.

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Official Court Reporter

A-46 

SHARNELLE L. WEST - DIRECT

1 Q. Were you upset while you were on the car ride
2 home?

3 A. Not real upset, no.

4 Q. How about once you got to your girlfriend's
5 house?

6 A. No.

7 Q. You weren't upset at all?

8 A. No. I went to bed.

9 Q. Did you stay up and talk to your girlfriend
10 at all?

11 A. No, I didn't go there to talk, really. We
12 were supposed to go shopping the next day. That's
13 what I went there for.

14 Q. It's your sworn testimony that when you got
15 to your girlfriend's house you didn't talk to her
16 about seeing the man get shot and saying Ralph did it?

17 A. No, because I didn't see that.

18 MS TSANTES: Nothing further.

19 THE COURT: We are going to take a recess
20 right now.

21 MR. ADKINS: Can we talk about scheduling?

22 THE COURT: We are not breaking for today. I
23 will let the jury get started. The jury can go in.

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Official Court Reporter

~~A-47~~ ~~A-47~~

SHARNELLE L. WEST - DIRECT

1 (Whereupon, the jury left the courtroom.)

2 THE COURT: I will see you all about
3 scheduling here at the sidebar.

4 (Whereupon, counsel approached the bench and
5 a discussion took place off the record. After
6 which, counsel returned to the trial table and
7 the following proceedings were had:)

8 THE COURT: We will take a recess.

9 (Whereupon, Court stood in recess and brief
10 recess was taken.)

11 THE COURT: Okay.

12 MS TSANTES: I have a couple more questions.

13 THE COURT: Okay. All right.

14 Bring the jury in.

15 (Whereupon, the jury returned to the
16 courtroom.)

17 THE COURT: All right. You may proceed.

18 BY MS TSANTES:

19 Q. Ms. West, I have a couple more questions.

20 After the shooting, didn't you see Ralph going up
21 towards Center Street after he left your apartment?

22 A. No, because I was still at Little Creek for a
23 couple of minutes after I told him to leave. I didn't

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A-48 ~~4-2~~ ~~AMS~~

SHARNELLE L. WEST - DIRECT

1 see him going anywhere, no.

2 Q. Didn't you tell Kenyon Horsey over and over
3 again: I can't believe he did it; I don't believe he
4 did it; he shot that man; Ralph shot that man, didn't
5 you tell him that?

6 A. No, I did not.

7 MS TSANTES: I have nothing further.

8 MR. HALLER: We need to approach.

9 THE COURT: All right.

10 (Whereupon, counsel approached the bench and
11 the following proceedings were had:)

12 MR. HALLER: Okay, we have the criminal
13 record of Sharnelle West. She is on probation to Drug
14 Court, it appears. And my theory here, of course, is
15 that the arm of the law, you were assisted by the
16 prosecution's office pursuing VOPs, violations. They
17 handle probation violations and the prosecutors, that
18 gives them leverage over her. I intend to ask her.

19 THE COURT: I don't know what that is. I
20 wouldn't want that --

21 Madam Clerk, we need to call down and have
22 somebody pull -- if we have a file here -- on a
23 Sharnelle L. West.

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Official Court Reporter



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1 THE CLERK: Yes.

2 THE COURT: On Sharnelle L. West. I need to
3 potentially get her file and her Drug Court file,
4 okay? If this is diversion -- she may just be in
5 diversion.

6 MS TSANTES: That's what she told us in the
7 interview.

8 THE COURT: She is in diversion, not
9 convicted.

10 MR. HALLER: She has to report.

11 THE COURT: To me. She is not in control of
12 the prosecutor. She reports to me. She is at the
13 mercy of the Court as to whether or not she can be
14 terminated from the program and whether or not she
15 would be adjudicated guilty. She has been charged.
16 She has not been convicted of anything if she is just
17 in the diversion.

18 MR. HALLER: The prosecution never gets
19 involved in cases with the Drug Court?

20 THE COURT: The prosecution makes a decision
21 as to whether or not she goes into Drug Court or not.
22 When she enters, that is totally up to the Court. Is
23 this somebody that you really want to impeach? Strike

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Official Court Reporter



A-50

1 that.

2 MR. HALLER: The answer to that --

3 THE COURT: Don't strike that.

4 MR. HALLER: I didn't mean to throw you a
5 screwball. I do want to make -- raise the legal
6 questions that are proper to be raised here. And this
7 is one, it's a little different. I mean, every time I
8 come up with a record there is something with a twist
9 on it.

10 THE COURT: We will let you go there if the
11 record from the Prothonotary's Office supports being
12 able to go there, okay?

13 MS TSANTES: She acknowledged she was in Drug
14 Court.

15 THE COURT: What I want to find out is where
16 she is. I will let you go there: If you are in the
17 program; have you been charged and you are in the
18 program -- you can go there -- as to whether the
19 prosecutor made a decision to let you go into the
20 program. They can ask: Have you been convicted of
21 anything, or anything of that nature. If you put it
22 in front of the jury, we will let the jury have the
23 whole thing.

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A-51

~~12~~

~~12~~

SHARNELLE L. WEST - CROSS

1 MR. ADKINS: I think he can go ahead and
2 point out she's in Drug Court.

3 MR. HALLER: Yeah.

4 THE COURT: You begin your cross-examination
5 while that file is being pursued?

6 MR. HALLER: Yeah, but I'm not going to be
7 very long.

8 THE COURT: We will do our best then. Thank
9 you.

10 CROSS-EXAMINATION

11 BY MR. HALLER:

12 Q. So you were sitting right around the green
13 box when the shooting occurred?

14 A. Yes.

15 Q. That's maybe 100 feet?

16 A. I don't -- 100 feet what?

17 Q. From the box to where the entrance to Little
18 Creek is?

19 A. I don't know how far it is.

20 Q. And you didn't see Ralph Reed shoot anybody?

21 A. No.

22 Q. And then later Ralph was in your apartment?

23 A. Yes.

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Official Court Reporter


A-52

SHARNELLE L. WEST - CROSS

1 Q. And I take it that he -- or you inferred that
2 he was going there to use the bathroom?

3 A. Yes, that's the way I took it. What else
4 would he go there for?

5 Q. Had he done that before with your apartment?

6 A. Yes, he's been there with Kenyon before.

7 Q. How many times has he used the bathroom
8 before in your apartment?

9 A. I don't know.

10 Q. A few times, many times, only that once?

11 A. I don't know.

12 Q. Were you upset that he had went into your
13 apartment like that?

14 A. No. I mean, he's not the only one that used
15 my bathroom, just went in and used the bathroom.

16 Q. You indicated that he talked to people in the
17 one or two weeks vehicles that came up that night?

18 A. Yes.

19 Q. And did you recognize the people that were
20 driving the vehicles?

21 A. No.

22 Q. Do you know whether or not they were just
23 friends over that he was chatting with or not?

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Official Court Reporter

A-53 ~~103~~ ~~104~~ ~~105~~

SHARNELLE L. WEST - CROSS

1 A. They may have been. You know, they may have
2 been.

3 Q. One vehicle you mentioned was a white pickup
4 truck?

5 A. Yes.

6 Q. Describe the other vehicle?

7 A. It was a red and white truck.

8 Q. What sort of truck?

9 A. It wasn't an open-back truck.

10 Q. Was it actually a truck or was it a sport
11 utility vehicle?

12 A. It wasn't a pickup. I guess a sports utility
13 vehicle. It wasn't a pickup truck.

14 Q. Okay. Do you remember what tags it had?

15 A. Oh, no. No.

16 MR. HALLER: All right.

17 Your Honor?

18 THE COURT: All right. You can come to the
19 sidebar.

20 (Whereupon, counsel approached the bench and
21 the following proceedings were had:)

22 MR. HALLER: I am going to tell you right
23 now, regardless of your ruling, I'm going to go ahead

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SHARNELLE L. WEST - CROSS

1 and impeach. So perhaps you don't even want to make
2 the ruling.

3 THE COURT: I am going to follow-up. January
4 the 28th she went into the Drug Court Diversion
5 Program on apparently a marijuana charge. She is in
6 the Drug Court Program on those charges. The
7 prosecutor makes the decision whether she goes and I
8 make the decision. She is not doing very well. In
9 fact, I will probably see her later this month.
10 Hopefully she will be doing better then.

11 If you want the go into that, you can.

12 MR. HALLER: Well, I don't want to go into
13 it.

14 THE COURT: All right. I have another
15 question: If you have 3507, you haven't touched on a
16 lot of things. You are not --

17 MS TSANTES: No.

18 THE COURT: Fine. If you bring Kenyon in,
19 it's only for impeachment purposes. Then we have to
20 distinguish between impeachment and 3507.

21 MR. ADKINS: We will have Kenyon here
22 probably tomorrow and we intend to address the
23 conversations in the vehicle.

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Official Court Reporter

A-55

A handwritten signature, possibly "A-55", is written over a dark, rectangular stamp or seal.

1 THE COURT: Well, I understand that. And I
2 think you ought -- we ought to have this young lady
3 here tomorrow.

4 MR. ADKINS: Absolutely.

5 THE COURT: So we can decide what issues we
6 may have or may not have at that time. Because that
7 may very well be for impeachment only. I have to
8 restrict it to impeachment.

9 (Whereupon, counsel returned to the trial
10 table and the following proceedings were had:)

11 THE COURT: Okay, any more redirect?

12 MS TSANTES: Yes.

13 THE COURT: Okay.

14 REDIRECT EXAMINATION

15 BY MS TSANTES:

16 Q. Ms. West, Mr. Haller just asked you some
17 questions about Ralph going into your apartment at
18 times when you were there and when you were not there;
19 do you remember those questions?

20 A. Yes.

21 Q. And you told the jury that he would go from
22 time to time to your apartment to use the bathroom
23 whether or not you were there; is that right?

DAVID WASHINGTON
Official Court Reporter



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SHARNELLE L. WEST - REDIRECT

1 A. I said he would go there with Kenyon from
2 time to time.

3 Q. But he has been in your apartment before?

4 A. Yes.

5 Q. You always felt comfortable with him in your
6 apartment before?

7 A. I mean, yeah. It wasn't a big deal. He
8 wasn't the only person that was in or out of my
9 apartment.

10 Q. Well, if he was such a good friend that he
11 was able to come and go in your apartment, why, on
12 November 23rd, 1999, did you ask him to leave the
13 apartment after those shots were fired?

14 A. Because I wasn't going to be home for the
15 rest of that night and I wanted to lock my door.

16 Q. Isn't the reason you ordered him out because
17 you had just seen him kill that man?

18 A. No.

19 MR. HALLER: I object. This is her witness.

20 THE COURT: Overruled. All right. Are we
21 done for right now?

22 MR. HALLER: We are done for right now.

23 THE COURT: Ma'am, you are still on the

DAVID WASHINGTON
Official Court Reporter



A-59

Sharnelle West.

MR. ADKINS: Actually, I'll call Sharnelle West for cross-examination purposes for Mr. Haller.

THE COURT: Is she here now?

MR. ADKINS: Yes.

THE COURT: May it please you both. This is actually typical in these types of cases for these things to happen. It is probably why we get frustrated with the time.

SHARNELLE L. WEST

was called as a witness by and on behalf of the State of Delaware and, having been previously duly sworn, was examined further and testified as follows:

CROSS-EXAMINATION

BY MR. HALLER:

Q. Good morning.

A. Good morning.

Q. Let's go back to November 23rd, the day of the incident. Are you with me?

A. Yes.

Q. You were on the green box?

A. Yes.

Q. You heard shots?

DAVID WASHINGTON
Official Court Reporter

D-16

SHARNELLE L. WEST - RECROSS

A. Yes.

Q. Later on in the evening you met up with Kenyon Horsey?

A. Yes.

Q. What did you tell Kenyon Horsey about the shooting?

A. That someone had been shoot, shot and hit a house.

Q. Did you tell him any particular person had done the shooting?

A. Yes.

Q. Who was that?

A. I said Ralph.

Q. Why did you say Ralph?

A. Because that's what they were saying out at Little Creek, that Ralph did it.

Q. Is this something you had heard?

A. Yes.

Q. Can you give us an idea as to what time you met up with Kenyon Horsey and where?

A. At his grandmother's on Center Street. I'm not sure what time it was.

Q. Can you give us some idea how many minutes

KENYON HORSEY - Direct

1 A Me and Oscar Johnson was sitting on my car
2 in front of my grandmom's and we heard like some
3 brakes squealing, then we heard gunshots at the same
4 time. We were like -- we heard gunshots.

5 Q About how many gunshots did you hear?

6 A Like four. There were four or five.

7 Q What's the next thing that you saw?

8 A Then we seen a lady named Ms. Yvonne coming
9 across the field where we was sitting at on my car,
10 hollering about, "That boy done shot somebody, that
11 boy done shot somebody."

12 Q Did she seem calm or upset?

13 A She was upset.

14 Q And where did she go?

15 A She just stood in the field, just kept
16 saying it over and over.

17 Q All right. Did you see anybody after you
18 saw Ms. Yvonne?

19 A About like ten minutes later, I seen Ralph
20 coming from around the hill from like Little Creek
21 direction.

22 Q Coming around the what?

23 A The hill, from like towards Little Creek

direction. It's like ten minutes after I heard the
shots and Ms. Yvonne got up there.

Q All right. Did you see anybody else?

A Like five minutes later, Sharnelle came
from behind the same way Ralph came.

Q Does she have a nickname?

A Dutch.

Q Did you say anything to Ralph at that point
or did he say anything to you?

A Me and Pie said at the same time about,
"Man, you've been shooting, weren't you?" And he
was like, "No, no, unh-unh, it wasn't me."

Q And how about Dutch, did you happen to make
contact with her?

A Yeah. I had to take Dutch home because she
was spending the night with us that night. And she
got in my car and she just kept saying, "I can't
believe he did it. I can't believe he did it." And
then when she got to my house, she was like, "That
boy shot him."

Q Did she say who shot him?

A She didn't say. She just said, "The boy
shot him."

KATHY S. PURNELL
OFFICIAL COURT REPORTER



A-60

Q Did you have an interview with Detective
Fraley, with Ms. Tsantes and myself present, this
past Sunday at approximately 11:00 a.m.?

A Yes, I did.

Q At the Attorney General's Office?

A Yes, I did.

Q And when specifically asked whether Dutch,
after saying, "I can't believe he did it, I can't
believe he did it, I can't believe he did it,"
whether she said Ralph did it, did you say, "Yes,
she said Ralph shot him"?

A Yes.

Q You said that?

A Yes. When she said, "I can't believe he
did it, I can't believe that boy shot..." -- I said
who shot him, and she said Ralph.

Q During approximately the month before this
incident, that night of the shooting incident, were
you somewhat close with Ralph Reed?

A Yes.

Q Do you know if Ralph Reed, of your own
personal knowledge, was selling crack cocaine in the
Little Creek area during that time?

KATHY S. PURNELL
OFFICIAL COURT REPORTER

A-61

1 house and that's when he was telling me something
2 about Kenyon shot somebody. And that's when Kenyon
3 come behind us and called Ralph.

4 MR. ADKINS: Excuse me.

5 BY MR. ADKINS:

6 Q When you met Ralph at the entranceway, were
7 the police up there to Little Creek?

8 A I don't know.

9 Q Well --

10 A I'm sorry, but it's two entrances, and it
11 was foggy and I could not see. It was no police.
12 Because that night was the foggiest night. And the
13 way -- it's on Center Street. The entrance from
14 there --

15 Q So you didn't hear any sirens or see any
16 lights?

17 A No, sir.

18 Q Well, after Kenyon and Dutch have left,
19 where did you and Ralph go?

20 A Excuse me?

21 Q Where do you and Ralph go after Kenyon --
22 did Dutch leave with Kenyon Horsey?

23 A I don't know.

1 A Yeah. I seen Kenyon Horsey with a .380,
2 because he came and showed my brother when he got
3 it. This was before, you know what I'm saying,
4 before all this came around, when he first got it.

5 Q When was that?

6 A In the fall. It was still in the fall.

7 Q Where was that?

8 A He came right up there by where I stayed at
9 in West Laurel.

10 Q West Laurel?

11 A This is right down the street from Belles
12 Avenue.

13 Q Kenyon Horsey?

14 A Yes, he showed it to me and my brother.

15 Q And what was it that he showed to you and
16 your brother?

17 A A .380.

18 Q And do you know this was a .380?

19 A Yes.

20 Q When you say your brother, who is your
21 brother?

22 A Jontue Wise.

23 Q Was there a later time when you saw this

1 group. Darren is another one that got called.
2 Darren didn't see that guy shoot anybody. Sheik,
3 she didn't see him shoot anybody. And it's not
4 because Sheik just lies, because when he asked her
5 about the bathroom, "Yeah, he had been in my
6 bathroom; I told him he had to get out."

7 Ms. Williams is the last of the four. Ms.
8 Williams, she's called. "Did you hear shots and
9 turn around?" "Yes." "Did you see him?" "No."

10 So out of your four witnesses, out of this
11 vast of people, that's what you're left with, three
12 out of four are going to say -- doesn't say he's the
13 shooter. One does and she's intoxicated on
14 something.

15 Now you'll rely on three other witnesses
16 who weren't on the corner, two in the apartments,
17 and one who was just coming home. The two in the
18 apartments were Juanita Hopkins and Sarah Handy.
19 Now, you'll have the excellent work that the
20 evidence technician did, Mr. Marvel, including the
21 aerial photos. You'll have photos identifying which
22 buildings are which, so you can examine the
23 buildings in relation to the entrance to that

1 apartment very well.

2 Now, where this took place, the entrance to
3 the apartments, is between the 200 building and the
4 300 building, and down there further is the 100
5 building. The entrance, the 200 building, the 100
6 building.

7 We heard from a witness who was in an
8 apartment in the 200 building. She was Sumika
9 Dixon, and Sumika Dixon said, "I could look out my
10 window and I could see the deli," because it's right
11 out her window, as you'll see as you're looking at
12 the photographs. But she couldn't look around and
13 see the entrance. Now, that's for the 200 building,
14 which is right next to the entrance. Ms. Handy and
15 Juanita are in the 100 building, which is even
16 further away, further south. They don't have any
17 view whatsoever of the entrance. They're saying,
18 well, we looked out the window and it was Ralph.
19 Just look at those photos, the 100 building, the 200
20 building and the entrance, and see whether Juanita
21 Hopkins and Ms. Handy could see the entrance to the
22 building.

23 Mrs. Handy gave a statement to the police

1 after the incident. She said, "I couldn't see who
2 it was." That was her initial response, "I couldn't
3 see who it was." But then after she had been
4 questioned repeatedly, then she could see who it
5 was. Juanita Hopkins, the tape in the police car,
6 being promised nobody would ever know, that's
7 foolishness. She thought it was right and she came
8 in here under oath and said she wasn't sure it was
9 Ralph.

10 Now, you were asked about the first
11 witness. Who was the last witness? Mr. Jefferson
12 who testified at the trial. He's not claiming he
13 saw the shooting. He was dropped off at his
14 apartment, at the 400 building further back in the
15 complex. He's further back in the complex and he
16 hears shots and he has to run across the parking
17 lot. He has to run from two buildings, by two
18 buildings. I mean how long is that going to take?
19 It's going to take a lot more than two seconds. The
20 shooting is going to be over. He says, "Well, I saw
21 Ralph pointing or had his hand up." He said he had
22 his hand up.

23 I mean here the car is going down Crockett

From: ~~REDACTED~~ (movant)

Delaware Correctional Center

1181 Paddock Road

Smyrna, Delaware 19977

To: The Honorable T. Henley Graves

Resident Judge of Superior Court

Sussex County Courthouse

The Circle, P.O. Box 746

Georgetown, Delaware 19947

February 25, 2005

Re: STATE v. Reed,

ID# 9911018706(R-1)

Dear Judge Graves,

I, the Movant, write in regard to the arrangement in which you scheduled the Evidentiary Hearing to be conducted on Thursday, March 3, 2005 at 9:30 in the Sussex County Superior Court.

Although movant greatly appreciate the opportunity to be heard on his postconviction motion, however there are several problems with the ORDER For conducting the evidentiary hearing — 1) The Court did not identify what issue or issues that shall be present at the hearing; 2) According to Rule 61(h)(2) For conducting such hearing, due regard must be given For the need of both parties For adequate

time For investigation and preparation ; 3) The need For a private investigator ex parte At court expense will be needed to locate witness Keyshawn Banks As indicated on page 9 OF Movant's December 20, 2004 Letter-Response to this court ; 4) Because Keyshawn Banks And Jerome Reed need to be interviewed And prepared For their in-court testimony, movant will need the assistance OF Court Appointed counsel ; 5) Also, it was the STATE's Theory At trial that the victim was Fatally Shot in AN Attempt to rip-off drug dealers For \$20 worth OF Crack Cocaine. So movant need to subpoena the victim's bank account records, his brother, wife And employee Michael Hovatter whom were with the victim earlier that day And could verify that the victim, A Successful self-employed business man with access to plenty OF money, had no reason to steal or rip-off anybody For drugs or money (see page 19 to 20 OF movant's December 20, 2004 Letter-Response). This evidence will support movant's defense that someone else committed the crime And that the victim was Killed during a robbery; 6) Since Baton claim And the unfair Voir Dire Questions claim contained in movant's Motion For AN Evidentiary Hearing Are complex issues requiring additional historical statistical records And other responses, the assistance OF

Court appointed counsel will be needed for this reason as well; And 7) Movant have no experience or legal knowledge for conducting evidentiary hearings, questioning witnesses, using the Rule of Evidence or other Procedures necessary for adequate preparation and presentation.

Is the Court granting an Evidentiary Hearing on all the issues contained in movant's December 20, 2004 Letter-Response and attachments thereto?

In any event, pursuant to Super. CT. Crim. Rule 61(h)(2), this Honorable Court should issue an Amended Order - "A Controlling ORDER" for conducting the Evidentiary hearing taking into consideration the needs and concerns for movant's 6th and 14th Amendment rights to compulsory process, assistance of counsel and procedure due process of law for the reasons outlined herein above.

Finally, if the court deny the requests respectfully submitted herein then movant ask that the evidentiary hearing be re-scheduled for a later date in March 2005 in order for movant to locate and obtain the correct addresses and names (if possible without use of the Discovery Procedures) of all persons he want subpoenaed to the hearing and will provide same to the court Prothonotary for issuing subpoenas to those people.

cc:

James W. Adkins (DAG)

Karl Haller, Esq

Thank You!
Ralph Reed

[REDACTED]
Delaware Correctional Center
1181 Paddock Road
Smyrna, Delaware 19977

To: The Honorable T. Henley Graves
Resident Judge
Sussex County Courthouse
The Circle, P.O. Box 746
Georgetown, Delaware 19947

April 27, 2005

Re: State v. [REDACTED], ID# 9911018706 (R-1)
(Unresolved Batson Issue)

Dear Judge Graves,

This is to memorialize the events that occurred at the April 7, 2005 evidentiary hearing which was a travesty of justice and a clear indication that Delaware white judicial officials systematically support racism in the jury selection process which routinely uses unconstitutional voir dire questioning police to exclude African-Americans from jury service and to allow all-white persons to serve on juries whom may know the victim of crime without any counter-questioning to identify such persons.

Prior to the scheduled hearing I requested the Court to appoint an attorney to represent me due to the complexity of the issues raised in the postconviction motion, especially the Batson claim which involve the obvious unconstitutional discriminatory disparate voir dire questioning which were specifically targeted at excluding African-American venire members affiliated with the defendant, while permitting white venire members to serve on the jury who actually knew or could have been friends with the victim and his family without being identified.

Before the court ruled on my request for appointment of counsel, my mother hired an attorney to represent me at the hearing.

However, the attorney did not properly raise the Batson issue at the evidentiary hearing or investigated and collect statistical evidence of the prosecution's use of the disparate voir dire questioning policy in other prior cases to support a Batson/Swain prima facie case of systematic exclusion of a particular race from jury service or to secure jurors who knew the victim of crime. Nor did the trial court require the prosecution to satisfy step two of Batson to articulate an on record race-neutral explanation for its use of peremptory challenges and the disparate

voir dire questioning. As this Court should know, there is no right to the 6th Amendment effective assistance of counsel in a postconviction motion for defaulted claims. See, Johnson v. Ellingsworth, 783 F.Supp. 215, 221 (D. Del. 1992).

In my December 20, 2004 Letter/Brief to the court and attachments thereto which also support a request to Amend, I made out prima facie case that the prosecution in fact used disparate questioning which later resulted in purposeful discriminatory treatment of Black and white venire members. The United States Supreme Court stated in Miller-El v. Cockrell, 123 S.Ct. 1029, 1043 (2003), that: "It follows that, if the use of disparate questioning is determined by race at the outset, it is likely a justification for a strike based on the resulting divergent views would be pretextual."

Id. In this context the differences in the questioning posed by the prosecutors are some evidence of purposeful discrimination. Batson, 476 U.S. at 97, 106 S.Ct. 1712 ("Similarly, the prosecutor's questions and statements during voir dire examination and in exercising his challenges may support or refute an inference of discriminatory purpose"). Miller-El, Id. at 1043

In my case the voir dire transcripts explicitly show that the Court itself asked any prospective

jurors who may "know the defendant or his friends or relatives," to identify themselves for purpose of being excluded. However, no such question was asked the jury panel regarding any juror who knew the victim or his friends or relatives for purpose of being excluded.

Because that question was asked the panel from the outset, every juror that revealed they knew the defendant or his friends and relatives were excluded for cause by the court or challenged for cause by the prosecution.

As I argued in my letter/brief, the friends and relatives of any person is of that person's own race, another statistical fact that counsel failed to proffer with available historical records in support to show the prosecution's discriminatory intent under Batson/Swain standards.

In comparison of similarly situated Black and White jurors, a black juror, Ms. Turner was excluded by the prosecution for cause because she revealed that she vaguely knew the defendant's mother. And four (4) other jurors were excluded for cause by the court for similar reasons.

Because no such question was asked the venire regarding the victim's family and friends from the outset of jury selection, no white juror, or otherwise, who may have been affiliated with the victim personally or his friend and relatives, identified themselves to the court merely because they

Felt such information was insignificant. This is evident when viewing voir dire transcripts of a white juror, Mr. Haley, who contacted the Court on the second day of trial and stated that "he thought it might be important to inform the Court that he knew the victim's brother from work."

Knowing this information, neither the Court, the prosecution or the defendant's own trial counsel sought to have Mr. Haley excluded for cause as it did with the black juror, Ms. Turner and the other Four (4) jurors who said they knew the defendant's relatives or friends. Nor did the Court or prosecution sought to find out whether or not there were any other unidentified jurors who knows the victim's relatives and friends.

Thus the discriminatory intent of the State of Delaware in the jury selection process is indisputable by the trial record itself.


Since the prosecution has not explained away its disparate questioning of similarly situated white and black venire members which resulted in the purposeful exclusion of the Black jurors, this court must conduct a further inquiry to satisfy steps two and three of Batson's mandatory test.

But in light of the grossly unconstitutional voir dire questioning there is no way to reconstruct

the trial records to determine the identity of those jurors who might have known the victim's friends or relatives which require this Court to automatically reverse my convictions and sentences.

Finally, I ask this court to accept my Letter/Brief Filed on December 20, 2004 and the arguments herein as the primary Responses on the merits of my postconviction motion before and after the evidentiary hearing. Any Response From my counsel shall be devoted strictly to a mere Supplemental Brief in support hereto.

Thank You!


MOVANT

cc:

James W. Adkins (DAG)

Karl Haller (Esq)

Leo J. Ramundo

Delaware Correctional Center
1181 Paddock Road
Smyrna, Delaware 19977

To: The Honorable T. Henley Graves
Resident Judge
Sussex County Courthouse
The Circle, P.O. Box 746
Georgetown, Delaware 19947

December 20, 2004

Re: STATE v. Reed,
ID #9911018706 (R-1)

Dear Judge Graves,

Please accept the Following as the movant,
Ralph Reed's, Reply to the State's and Mr. Karl
Haller's (movant's former trial counsel) Responses
to movant's Motion For postconviction relief
Filed pursuant to Superior Court Criminal Rule 61.

I. Facts

The movant was indicted by the Sussex
County Grand Jury For the Following offenses:
murder in the First degree and possession of a
deadly weapon during commission of a Felony.

(1)

18

Following a guilty verdict by a jury trial, on January 19, 2001, this court sentenced movant to a mandatory life sentence for the murder conviction and twenty (20) years in prison for the weapon charge. An appeal of the convictions was filed. The appeal was denied by the Delaware Supreme Court. This is the movant's first motion for postconviction relief.

II. Procedural Requirements

Whenever the court considers a motion under Rule 61, it must first consider the procedural bars in Superior Court Criminal Rule 61(i). See, Bailey v. State, 588 A.2d 1121, 1127 (Del. Supr. 1991). Movant's motion has been filed in the three year time period and this is movant's first motion. So the bars in Rule 61(i)(1) and (2) do not apply. Rule 61(i)(3) bars relief if the grounds were not raised in the proceedings that led to the conviction. They will be barred unless the movant can show cause for relief and prejudice. In this case the movant has alleged ineffective assistance of counsel which would on its face show cause for relief.

In order to prevail on a claim of ineffective assistance of counsel, defendant must meet the

two-prong test set forth in Strickland v. Washington, 466 U.S. 668 (1984). First, a criminal defendant who raises an allegation of ineffective assistance of counsel must show that counsel's representation fell below an objective standard of reasonableness. *Id.* AT 688. The defendant must demonstrate that counsel's performance was deficient. *Id.* AT 687.

This entails demonstrating that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. *Id.* Further, it is the defendant's burden to show, under the totality of the circumstances, that counsel was so incompetent that the accused was not afforded genuine and effective legal representation. See, Renai v. State, 450 A.2d 382, 384 (Del. 1982). Second, under Strickland, a defendant must show that there is a reasonable degree of probability that, but for counsel's unprofessional errors, the outcome of the proceedings would have been different; that is, defendant must show actual prejudice. 466 U.S. AT 694.

Thus, a reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* AT 687.

Therefore, in light of the fact that a claim of ineffective assistance of counsel can establish cause under Rule 61(i)(3), the first prong of

Strickland have been satisfied in this case. Thus, the only issue left for this court to decide under Rule 61 (1) (3), is whether the movant can establish a sufficient degree of "prejudice" raising to a violation of Strickland's second prong. Herein below, the movant Ralph Reed's claims of ineffective assistance of counsel are argued in their entirety to illustrate that trial counsel's deficient performance prejudiced the defense and that counsel's errors during the stages of the pretrial, jury selection, at trial and on appeal were so serious as to deprive the movant of a fair trial, a trial whose result is reliable. Strickland, 466 U.S. at 697.

III, Proposed Amended Claims

In movant's November 29, 2004, Letter To The Honorable Judge Graves regarding the granting of an Evidentiary Hearing on the Batson claim, movant also requested an opportunity to Amend his postconviction motion pursuant to Superior Court Criminal Rule 61 (b) (6) by leave of the court. In that letter to the court movant briefed three (3) proposed claims he wanted amended to these postconviction proceedings as following:

(A). Trial Counsel Improperly Open The Door For The STATE To Introduce Ms. West's

§ 3507 STATEMENT;

(B). Trial Counsel Failed To Request
A Full Chance Instruction; And

(C). Trial Counsel Fail To Raise The
Brady Violation.

(see LETTER ATTACHED hereto Exhibit "B").

Movant note For clarity that proposed Amended Claim (A) on page 2 of the Letter to Judge Graves does not argue whether or not it was improper For the court to admit Ms. West's 3507 Statement under § 3507 during trial. Clearly the court admitted Ms. West's prior out-of-court Statement under D.R.E. 801(d)(1)(A) and D.R.E. 613(c) & (d) For impeachment purposes only to be weighed against the credibility of both Ms. West and Mr. Horsey. (see Court's Jury Instructions T.Tr. D-11 thru D-14). Although Ms. West's out-of-court Statement was admitted under Rule 801 and 613, it is still the product of § 3507 and the requirement that it be voluntary is still govern by § 3507 (a). ✓

Furthermore, Ms. West's prior out-of-court Statement to Mr. Horsey that movant had shot the victim was corroborated by Ms. West on Re-cross examination by movant's own trial counsel, (T.Tr. D-15, 16), which satisfied the "inconsistent or

(5)

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consistent" elements of § 3501, however the trial court did not admit Ms. West's prior statement under § 3501 because the proponent party seeking to introduce the Allege evidence was the prosecution, not the defense. (See Trial Court's December 19, 2000 Decision on movant's Motion For New Trial page 3 to 5).

Thus, in proposed Amended claim (A) on page 2 to 5 of Letter To Judge Graves (Exhibit "B"), movant basically state the Facts demonstrating how his trial counsel laid the Foundation For Ms. West's Allege prior out-of-court statement could be used by the prosecution AS substantive evidence under § 3501. Movant Also sought to demonstrate that counsel's actions on re-cross examination of Ms. West violated his 5th Amendment right against self-incrimination because counsel intentionally elicit (or forced) Ms. West to corroborate Mr. Horsey's unsubstantiated allegations that she made the prior statement to Mr. Horsey that movant had shot the victim which also defy the principle of § 3501 that the prior statement must be voluntary.

Lastly, since the jury was instructed to weigh the credibility of Ms. West and Mr. Horsey regarding whether or not the out-of-court statement: "that movant shot the victim", were made, then trial counsel's actions on re-cross examination impermissibly weighed in Favor of Mr. Horsey's credibility and the jury could have construed such Admission by

(6)

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Ms. West as substantive evidence that she actually saw movant shoot the victim as the prosecution contend she did on direct and re-direct examination and which is the essential element of the information in count one of the indictment charging movant with first degree murder. (T. Tr. B-180 to 184; A-192).

(D). Batson Claim:

Movant seek also to amend his Batson claim as it is argued in Movant's Motion For An Evidentiary Hearing. (See Motion Exhibit "C").

In the State's Response at paragraph 4, they premise their argue on Riley v. State, Del. Supr. 496 A.2d 997 (1985), that the prosecution did not discriminate in the jury selection process on basis of race. The standard in Riley, 496 A.2d at 1011-1013, like the Freddiman v. State, Del. Supr. CT. No. 203. 1988, Holland, J. (February 22, 1989), holding that peremptory challenges can be exercised "not solely on the juror race" has been rejected in the Third Circuit Court decision of Riley v. Taylor, 277 F.3d 261, 285 (3rd. Cir. 2001).

Also, movant amend to give the State an opportunity to address the claim of the unconstitutional Disparate Voir Dire Questions To The Jury Panel. Even though the practice ... might not be denominated as a

Batson claim because it does not involve a peremptory challenge, the use of the practice here tends to erode the credibility of the prosecution's Assertion that race was not a motivating factor in the jury selection. See, Miller-El v. Cockrell, 123 S. Ct. 1029, 1044 (2003).

Thus, movant herein ask this Honorable Court to accept his previously filed Motion For Evidentiary Hearing (Exhibit "C") as an Amendment of the Batson Claim.

IV. Other Claims Sought For Relief

(E). Trial Counsel Failed To Properly Investigate And Subpoena Two Crucial Defense Witnesses Who Would Support Movant's Story That Kenyon Horsey Committed The Crime :

Prior to the commencement of trial movant Ralph Reed made several requests to his trial counsel to interview and subpoena Jerome Reed and Keyshawn Banks. Mr. J. Reed would have testified that he observed Kenyon Horsey shoot and kill Gregory Howard as Howard drove away in his Ford Bronco near the Little Creek Apartment complex. (See Jerome Reed's Affidavit attached hereto Exhibit "A").

Although movant is presently unable to locate and obtain an Affidavit From Keyshawn Banks at this time, however movant expect that Mr. Banks will confirm that he possesses personal knowledge or that he was with State's witness Reshawn Jefferson on the night of the crime in question and Mr. Jefferson did not actually witness the shooting as he testified under oath at movant's trial that he observed movant standing close to the murder victim's Ford Bronco as the victim speeded away. (T.Tr. B-68)

Thus, the trial court should appoint movant the assistance of counsel for the limited purpose to locate, interview and obtain a sworn affidavit from Reshawn Banks for these postconviction proceedings pertinent to establishing the prejudice prong of Strickland's test on counsel's reasonableness for failure to investigate.

On page 2 of trial counsel's October 1, 2004, Response to movant's postconviction motion, counsel don't deny that movant never informed him about Mr. Banks and Mr. J. Reed. However, counsel only states: "I do not have recollection of Banks and J. Reed at the present time"; and that "surely if these were people who could exonerate the defendant we should be getting a new trial perhaps."

Certainly counsel's Response support a reasonable probability that movant did inform him about Banks and J. Reed but counsel was too overburden with other areas of the trial preparation that he simply forgot to interview and subpoena these two important witnesses.

Since movant only have the benefit of J. Reed's Affidavit then it is a matter of principle that he limit the focus to the sworn averments by Mr. J. Reed while deferring any further comment about Mr. Banks' proposed deposition until such date and time a sworn affidavit can be obtained from him.

Jerome Reed's Affidavit:

The sworn averments contained in J. Reed's Affidavit demonstrate that trial counsel's decision not to subpoena J. Reed as a defense witness was not reasonable and prejudiced movant's defense that someone else (Kenyon Hersey) committed the crime.

First, movant has a constitutional right under both State and Federal Law to put on "evidence of the same character tending to identify some other person as perpetrator of the crime". See, D.R.E. 404(b) and Jone v. Wood, 201 F.3d 557, 562-63 (9th Cir. 2000). The Jones court held that before evidence implicating another suspect can be admitted, "there must be such proof of connection with the crime, such as a train of facts or

circumstances as tend clearly to point out some one beside the accused as the guilty party" Id. AT 562. Furthermore the Jones Court concluded that "...because the other suspect evidence was admissible under Washington law, Jones has established Strickland prejudice"; From counsel's Failure to present such evidence At trial. Id. AT 563.

Second, evidence of motive, ability and opportunity for a third person to commit a crime is not sufficient foundation for the introduction of other suspect evidence. Id. AT 562. Such evidence must be "coupled with other evidence tending to connect such other person with the actual commission of the crime charged" Id. However, a lesser foundational restriction applies to cases involving circumstantial proof of crime:

[I]f the prosecution's case against the defendant is largely circumstantial, then the defendant may neutralize or overcome such evidence by presenting sufficient evidence of the same character tending to identify some other person as the perpetrator of the crime.

See, Jones, 207 F.3d AT 562-63 (citing) State v. Clark, 78 Wash. App. 471, 898 P.2d 854, 858 (1995).

Applying this Law to the Facts of this case which is consistent with D.R.E 404(b), the averments contained in J. Reed's sworn Affidavit that he witnessed Kenyon Horsey and Yvonne DeShields engaged in a conversation with the victim G. Howard at which time a hand to hand transaction of some sort was made and as the victim pulled (speeded) away fast in his Ford Bronco, Mr. J. Reed observed Mr. Horsey pull out a handgun and fired multiple shots at the fleeing vehicle. (see, J. Reed's Affidavit Exhibit "A"). Mr. J. Reed also stated that he observed Mr. Horsey hand Ms. DeShields the handgun and she walked off quickly towards the Graveyard. (Affidavit page 2). Lastly, Mr. J. Reed stated that just prior to the shooting he observed Ms. DeShields get into the victim's vehicle and drive around the block before meeting up with Kenyon Horsey. Id.

In contrast Mr. Horsey and Ms. DeShields, two of the State's chief witnesses against movant at trial, testified that movant committed the crime.

And the State's case was purely circumstantial consisting of Four (4) witnesses' (including Ms. DeShields) testimonies which were all inconsistent with their geographic locations from where they claim to have witnessed the crime take place at a far distant through the foggy night inclement weather.

conditions. (See Section "B" on pages 5-7 of Letter To Judge Graves regarding proposed Amended claim OF Trial Counsel's Failure To Request A Full Chance Instruction which point out many OF the inconsistencies in the STATE's witnesses' testimony, Attached hereto AS exhibit "B").

Thus, the exculpatory circumstantial evidence contained in J. Reed's Affidavit is proof that Mr. Hersey and Ms. Deshields ARE the actual perpetrators OF the crimes to which movant is convicted OF committing.

To prove this connection even Further Ms. Deshields' own trial testimony is conducive on this Fact. For instance, Ms. Deshields STATED (a) on the night OF the crime she seen the victim's vehicle AT the entrance way to Little Creek Apartments and that he passed her on the street by the graveyard (T.Tr. A-129); (b) that the victim occasionally speak to her and ask's her where to buy drugs (T.Tr. A-130); and (c) She had A bullet casing From the handgun that was used to shoot the victim (T.Tr. A-153 to 155). (Compare these Factors From Ms. Deshields' testimony with the Averments contained in J. Reed's Affidavit).

Although Ms. Deshields testified that the victim asked her where he could buy drugs, however she never stated that she referred the victim to the movant AS a possible customer. A matter OF Fact,

Ms. DeShields testified that she purchased drugs on the night of the crime but stated she did not buy it from the movant. (T.Tr. A-158 and A-169).

Trial counsel should have argued to the jury with this evidence that it is only logical to assume that if the victim asked Ms. DeShields where to purchase drugs (and admitted that she actually purchase drugs that night also), that of course, she referred the victim to the same person she purchased her drugs from.

Movant contend (and Trial Counsel should have argued) that that person Ms. DeShield referred the victim to for the purchase of drugs was in fact Kenyon Horsey which is supported by the sworn Affidavit of J. Reed who eyewitnessed the entire transaction.

Therefore, under the Jones standard this evidence of the same character tending to identify some other person as the perpetrator of the crime was admissible under D.R.E. 404(b). In addition, movant point out that the prosecution theory (as argued in summation) that there was no other person who could have committed the crime, a theory that movant was entitled to rebut once the prosecution relied upon it. Jones, 207 F.3d at 563. Movant's trial counsel's failure to subpoena J. Reed as a witness to rebut the prosecution's theory (as movant set

Forth herein) was unreasonable and sufficient to establish the prejudice needed under Strickland to create a reasonable probability in a different outcome but for counsel's errors.

(F). Trial Counsel's Failed To Use Inconsistencies In The State's Witnesses' Testimonies For Impeachment Purposes And To Support Movant's Defense That Someone Else Committed The Crimes :

Effective cross examination is essential to a defendant's right to a fair trial. Davis v. Alaska, 415 U.S. 308, 320, 94 S.Ct. 1105, 39 L.Ed. 2d 347 (1974).

It is the "principal means by which the believability of a witness and the truth of his testimony are tested." Fensterer v. State, Del. Supr. 493 A.2d 959, 963 (1988). Under Delaware Law, "the jury is the sole trier of fact, responsible for determining witness credibility and resolving conflicts in testimony." Pryor v. State, Del. Supr. 453 A.2d 98, 100 (1982). Jurors should have every opportunity to hear impeachment evidence that may undermine a witness' credibility.

As shown in the previous Argument above where trial counsel Failed to investigate potential defense witnesses who would have supported movant's theory that Mr. Horsey and Ms. Deshields were the actual perpetrators of these crimes. Because Mr. Horsey and Ms. Deshields were two of the State's chief witnesses against movant, the evidence contained in Jerome Reed's Affidavit (Exhibit "A") could have been used to impeach their credibility.

In addition to the above trial counsel Failed to use the inconsistencies in Ms. Deshields' testimony to discredit Sarah Handy's testimony about witnessing movant pointing and shooting a gun at the victim's vehicle.

First, Ms. Deshields testified that on the night of the crime she went to a friend's (Herman Dark) house by the Deli and bought some drugs and something to drink. (T.Tr. A-127). She heard female voices saying: "I don't believe you'll do it and then heard gunshots over from where voices were coming from". (T.Tr. A-128). The female statement "I don't believe you'll do it"; can be interpreted as an utterance to shoot the victim. Ms. Deshields went on to state that the shots came from the area "down the creek in front of the bench". (T.Tr. A-128). When asked on cross examination: "who were the people sitting on the bench near the

creek by Little Creek Apartments entrance-way where the shooting occurred"; Ms. DeShields replied: "That Sarah, Bacon and another unknown Female were sitting on a bench three or four feet away from where the movant Ralph Reed was shooting the gun" (T.Tr. A-131, 132; A-160, 161). However, Sarah (Handy) testified that she observed the entire shooting from her bedroom window at building # 107. (T.Tr. A-188 to 190). Movant note for the record that building # 107 is facing away to the side of the entrance way to Little Creek Apartments which makes it impossible for Ms. Handy to have witnessed the shooting from her bedroom window.

Ms. DeShields' testimony place Sarah Handy three or four feet away from the shooting. Thus, Jerome Reed's Affidavit place Ms. DeShields at the scene of the shooting as confirmed by her own trial testimony. The clear implication from Ms. DeShields' testimony regarding the unknown female sitting on the bench with Ms. Handy was in fact Ms. DeShields herself.

The Question becomes - "which of the two females (DeShields or Handy) stated 'I don't believe you'll do it', meaning urging the person with the gun to shoot the victim"?

In any event, Kenyon Horsey claims the gunman was the movant and movant said it was Mr. Horsey.

The State's witnesses, as shown above, did not testify truthfully about who in fact possessed the gun and shot the victim. At the very least, the evidence revealed here shows beyond a reasonable doubt that Ms. Deshields and Ms. Handy were actual accomplices to the murder of Gregory Howard which should have been explained to the jury and Court by movant's trial counsel with a request for a full Chance instruction on all the lesser included offenses to first degree murder under 11 Del. C. § 271 and 274 as argued in Amended Claim "B" in the movant's letter to Judge Graves (Exhibit "B").

Certainly, the testimonial evidence raises a contrary conclusion about movant being the actual perpetrator of these crimes and that the State's witnesses has placed the blame on movant to conceal their own direct involvement in the fatal shooting of the victim Gregory Howard.

Therefore, there is no way in which the failure of trial counsel to confront the State's witnesses with the grossly inconsistent testimony or use it as impeachment evidence and evidence that someone other than movant committed these crimes can be justified as sound trial strategy or a reasonable strategic choice. Thus, the prejudice prong of Strickland is established for counsel's trial errors

complained of herein above in Arguments "E" and "F", And the Third Circuit Court's Ruling on ineffective assistance of counsel in Berryman v. Morton, 100 F.3d 1089 (1996) support movant's claims for post-conviction relief. A contrary ruling would be totally unreasonable to the Federal Law governing the issue. Id. AT 1097-1102 (The Third Circuit reviewed each of Berryman's claims separately and found that counsel's performance strategy were unreasonable).

- Other Ways

(I). The Franks Suppression Motion:

Although trial counsel Filed a motion To Suppress movant's Statement to the police in which a hearing was conducted thereon as the State's Response correctly notes. However, counsel did not File A request For a Suppression hearing under Franks v. Delaware, 438 U.S. 154, 98 S. CT. 2674, 57 L. Ed. 2d 667 (1978) alleging that the police Affidavit of Probable Cause in support of the arrest warrant against movant was based entirely on False information from all the State's witnesses that the police knew or should have known was

inaccurate. But in reckless disregard for the Truth, where investigatory Facts show that other people were involved in the commission of the murder and the Fact that all the money was missing from the victim's wallet found on the seat of the vehicle which indicates that the victim could have been robbed while attempting to purchase drugs, however the police rush to judgment to arrest the movant for the crime based upon an unsubstantiated theory that movant shot the victim for failing to pay for twenty (\$20) dollars worth of drugs. The police made no attempt to ask the victim's family (wife or brother) or his employee, Michael Hovatter, who was with the victim earlier that day, how much money he may have possessed on the night of the crime. (See Officer Holcumb's testimony about victim's wallet T.Tr. A-107 and employee Hovatter's testimony T.Tr. A-116). The victim, a successful business man, had no reason to steal or "rip-off" anybody for drugs or money.

Thus, the Facts show that Ms. Deshields lured the victim Gregory Howard to Mr. Horsey for the purpose of purchasing drugs and they both robbed and killed him.

If trial counsel had filed a timely Suppression motion under Franks based upon the Facts

demonstrated in support hereto, it is a reasonable probability the trial court would have dismissed all charges due to invalid arrest warrant.

(J). Failure To File Motion For Acquittal:

Contrary to what the State and movant's trial counsel stated in their Responses that there were no basis for a Judgment of Acquittal, the movant contend otherwise. If trial counsel had properly investigated, interviewed 2 key witnesses, adequately prepared for trial and represented or argued the case from the perspective in which movant cited herein for counsel's ineffectiveness, then movant was entitled to Judgment of Acquittal pursuant to Rule 29 of the Criminal Rules. Because the State's witnesses testified falsely against movant to cover up their own involvement in these crimes, movant contend it would have been appropriate for the trial court to take the case from the jury and direct a verdict of Judgment of Acquittal in movant's favor. See, State v. Riter, 119 A.2d 894 (Del. Super. 1955). A Judgment of Acquittal denies the sufficiency of the evidence and challenges the State's right to go to the jury. *Id.* at 898. It is only where the State has offered insufficient evidence to sustain

a verdict of guilt that a motion For Acquittal will be granted. Id.

Wherefore, this Court must determine had movant's trial counsel properly argued the available evidence that someone other than movant committed these crimes, under the circumstances would the trial court granted a motion For Judgment of Acquittal had counsel Filed a motion after the State rested its case. Counsel's errors and Accumulated omissions prejudiced the rights of movant to receive due process of law in a timely fashion throughout the trial proceedings in violation of the 14th Amendment to the United States Constitution.

(K). Movant Was Denied Of His
6th Amendment Right To
Effective Assistance Of
Counsel On Direct Appeal:

On appeal to the Delaware Supreme Court, trial counsel escalated his gross misconduct by using the incriminating statements he intentionally elicit from Ms. West on re-cross examination, forcing her by threat of revoking her sentence of probation for drug convictions, to corroborate State's witness Kenyon Horsey's testimony that

(22)

A-~~80~~ A97

Ms. West told him that movant shot the victim. (See, Proposed Amended Claim "A" on page 2 to 5 of Letter To Judge Graves Exhibit "B" ATTACHED). Also, movant clarified his position on Ms. West's 3501 out-of-court STATEMENT allegedly made to Mr. Horsey herein Above on page 5 to 7.

Trial counsel impermissibly referred to the incriminating testimony elicited from Ms. West and recited her confirmation to the statement that she told Mr. Horsey that movant shot the victim. (See Counsel's Opening Brief To The Supreme Court page 27 to 33).

The Delaware Supreme Court may have rejected movant's appeal issue relating to the trial court's instructions on the admission and limited use of Ms. West's alleged prior out-of-court statement because it thought the statement was the proper product of 11 Del. C. § 3507(a) voluntariness. See, Hatcher v. State, Del. Supr. 337 A.2d 30 (1975) and STATE v. Rooks, Del. Supr. 401 A.2d 943 (1979), holding that 3507 statements must be voluntary product of free will. Also, See, Supreme Court's Order Affirming movant's conviction Reed v. STATE, Del. Supr. CT. No. 44, 2001 (Order July 12, 2001), Walsh, J. page 2 & 3 where it appears the Court thought Ms. West's alleged

out-of-court statement was voluntary and properly tested on direct and cross examinations for reliability and trustworthiness.

Had the Supreme Court known that trial counsel elicit the incriminating testimony on re-cross examination creating the inconsistency in Ms. West's continuous denial on direct and cross examinations of ever telling Mr. Horsey that movant shot the victim, then the Court may have ruled differently that counsel's misconduct violated movant's 5th Amendment right against self-incrimination and that because Ms. West was threaten with her prior drug conviction to recant her denial of the out-of-court statement to Mr. Horsey, the voluntariness requirement pursuant to 11 Del.C. § 3501 was not satisfied prior to admitting the statement under D.R.E. 801(d)(2)(A) and D.R.E. 613(c) and (d). See United States v. Mannino, 212 F.3d 835, 845 (3d. Cir. 2000) (counsel's failure to raise the sentencing issue on direct appeal prejudiced defendant because the Court would have vacated sentence had the claim been raised).

The Due Process Clause of the 14th Amendment guarantees the right to effective assistance of counsel on a first appeal. See Evitts v. Lucey,

469 U.S. 387, 396-99 (1985). IF counsel "entirely fails to subject the prosecution's case to meaningful adversarial testing"; As is the case here, the adversarial process itself becomes presumptively unreliable.

See, United States v. Cronie, 466 U.S. 648, 659 (1984). Trial Counsel's errors or misconduct in the case at bar acting as a second prosecutor constituted denial of assistance of counsel and court need not establish actual prejudice. See, Rickman v. Bell, 131 F.3d 1150, 1156-60 (6th Cir. 1997).

Therefore any subsequent Jury Instructions for consideration of Ms. West's alleged 3507 statement were constitutionally infirm and plain error.

Conclusion

Wherefore there exist an overwhelming probability that but for trial counsel's accumulated errors and omissions in the pretrial stage, at trial and on appeal the Courts would have entertained a different result.

Thus, since Strickland prejudice is satisfied on one or all counsel's trial errors complained of herein and attached exhibits "A", "B" and "C", the resulting convictions and sentences imposed upon movant for murder and weapon offenses are unworthy of confidences in their outcomes. Movant is entitled to a new trial as appropriate postconviction relief.

(25)

Lastly, and since movant made a valid claim that someone other than he committed the crimes to which he is convicted qualify as evidence of actual innocence under Superior Court Criminal Rule 61(i)(5) to which no procedural bar apply for the Federal court to review the claim.

Ralph Reed

Ralph Reed, prose

MOVANT

(26)

A-~~27~~ A101

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE

V.

CrA. No.: _____

ID # 9911018706 (R-1)

Ralph Reed
DefendantAFFIDAVIT

I, Jerome B Reed, being duly sworn, deposes and says: I WAS AT LITTLE CREEK APARTMENTS ON 11-23-99 AT 10:30 P.M. WHEN A BLUE & WHITE FORD BRONCO CAME UP THE STREET WITH A WHITE MAN DRIVING THE BLUE & WHITE FORD BRONCO. I WAS STANDING IN THE PARKING LOT OF LITTLE CREEK APARTMENTS. WHEN THIS LADY NAME YVONNE DESHIELDS WAS STANDING ON THE CORNER OF LITTLE CREEK APARTMENTS STORE CORNER. WHEN YVONNE DESHIELDS STOPPED THE BLUE & WHITE FORD BRONCO WITH A WHITE MAN DRIVING. YVONNE DESHIELDS THEN WALKED OVER TO THE BLUE & WHITE FORD BRONCO DRIVER'S SIDE AND WAS TALKING ABOUT SOMETHING WITH THE WHITE MAN. YVONNE DESHIELDS THEN WALKED AROUND TO THE PASSENGER'S SIDE OF THE BLUE & WHITE FORD BRONCO AND GOT IN AND THEY DROVE OFF, ONLY DRIVING AROUND THE BLOCK AND BACK TO THE SAME CORNER WHERE SHE GOT PICKED UP AT THE STORE CORNER OF LITTLE CREEK APARTMENTS. YVONNE DESHIELDS THEN GOT OUT OF THE BLUE & WHITE FORD BRONCO AND CALLED THIS OTHER CAR THAT WAS COMING

Jerome ReedSUBSCRIBED AND SWORN before me this 24th day of November, 2004 -Linathy J. Manto
(Notary Public)my Commission expires: June 14th, 2006

Ex. A1

A- ~~92~~ 17 102

WENT UP TO THE DRIVER'S SIDE OF THE CAR AND WAS SAYING SOMETHING TO KENYON HORSEY. KENYON HORSEY, I DON'T KNOW WHAT SHE WAS SAYING TO KENYON HORSEY BUT THE DRIVER THEN GOT OUT OF HIS CAR AND WENT UP TO THE BLUE WHITE FORD BRONCO TO SPEAK WITH THE WHITE MAN. KENYON HORSEY THEN WENT IN HIS POCKET AND PULLED SOMETHING OUT AND GAVE IT TO THE WHITE MAN THAT WAS DRIVING THE BLUE WHITE FORD BRONCO. THE WHITE MAN THEN PULLED OFF. KENYON HORSEY THEN PULLED OUT A GUN AND SHOT AT THE WHITE MAN, IN THE BLUE WHITE FORD BRONCO. I DON'T KNOW HOW SHOTS WERE FIRED BUT THE WHITE MAN THEN RAN INTO A HOUSE WITH HIS BLUE WHITE FORD BRONCO. KENYON HORSEY THEN GAVE THE GUN TO YVONNE DESHIELDS. I COULDN'T HEAR WHAT KENYON HORSEY SAID TO YVONNE DESHIELDS BUT SHE THEN WALKED OFF QUICKLY TOWARDS THE GRAVEYARD. LATER THAT NIGHT YVONNE DESHIELDS WAS SITTING IN KENYON HORSEY CAR IN LITTLE CREEK APARTMENTS PARKING LOT TALKING ABOUT SOMETHING THAT WAS THE LAST I SEEN OF YVONNE DESHIELDS AND KENYON HORSEY.

Jerome Reed

Subscribed before me and
notarized on pg 1 of this
document TTM

(2)

EX. A2

A-98

A103

JEROME REED - Cross

1 day it was -- yeah, I was there smoking crack, but ✓
2 that day was all -- it was foggy, really foggy out.

3 Q You are smoking with her, trying to get
4 intimate with her, and you wouldn't be surprised if
5 she said I have never seen him, never knew his name,
6 never knew him at all?

7 A Yeah, I would.

8 Q You wouldn't be surprised?

9 A I wouldn't be surprised.

10 Q Well, how is it that you knew Kenyon's name?

11 A I knew his name because when the shooting
12 occurred the lady hollered out that name.

13 Q What did she say?

14 A She just said, "No, no, no. Keyon, no, no."

15 Q Is it Keyon or Kenyon?

16 A I think it's Keyon.

17 Q Keyon?

18 A I can't pronounce the name right, but Keyon.

19 Q Did she say his last name?

20 A No.

21 Q And you can't think of Keyon's last name,
22 can you?

23 A I never knew the lady's last name.

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A-10f

LEWIS - Direct

1 THE COURT: Call your next witness, if any.

2 MR. RAMMUNO: That's all I have, Your Honor.

3 THE COURT: State call the witnesses.

4 MR. ADKINS: Yes. The State calls Sonja
5 Lewis.

6 THE COURT: Do you have a date of birth of
7 that person that you say is incarcerated?

8 MR. RAMMUNO: No, Your Honor.

9 THE COURT: Don't have a name. Can't check
10 it for you, sir. Don't have a proper name. I need
11 the full, proper name because there are a lot of them
12 in the computer with different spellings.

13 Swear the witness.

14 Whereupon,

15 SONJA KIMBERLY LEWIS
16 was called as a witness by and on behalf of the State
17 of Delaware and, having been first duly sworn, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. ADKINS:

21 Q Good afternoon, Ms. Lewis. Ms. Lewis, by
22 whom are you employed?

23 A Department of Corrections at Delaware

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A-105

LEWIS - Direct

1 Correctional Center in Smyrna.

2 Q DCC in Smyrna?

3 A Yes.

4 Q How long have you been employed by the
5 Department of Corrections?

6 A Fifteen years.

7 Q And in what capacity are you employed by the
8 Department of Corrections? At this time what is your
9 job or job title?

10 A Currently, I am the transfer administrator.

11 Q And what is the transfer administrator do?

12 A Basically, what we do is -- what I do is I
13 assign individual inmates to different units,
14 different cells according to their classification or
15 for health purposes or safety purposes.

16 Q And do you maintain records of all these
17 transfers in your office, and personally, do you
18 maintain these records?

19 A Yes, I do.

20 Q And so if I was to give you a name of a
21 certain inmate and SBI number, would you be able to
22 tell where they were at certain times?

23 A Yes, I can.

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A-106

LEWIS - Direct

1 Q Previous to today, were you asked to look up
2 those types of records with regard to a Jerome Reed,
3 which is SBI No. 318410?

4 A Yes.

5 Q And also with respect to a Ralph Reed, SBI
6 No. 320813?

7 A Yes.

8 Q Now this Jerome Reed that you are looking up
9 records on, is that the same Jerome Reed that is
10 serving a lengthy sentence for robbery first,
11 kidnaping, burglaries, possession of a firearm during
12 the commission of a felony, those types of offenses?

13 A Yes.

14 Q And this Ralph Reed that has that SBI number
15 I mentioned, is he the same person that is serving a
16 sentence, life sentence, for first degree murder out
17 of a 1999 incident?

18 A Yes.

19 Q Between the dates of May the 10th, 2004, and
20 the date of June the 22nd, 2004, can you tell me what
21 building and tier and cell this Jerome Reed was
22 assigned to?

23 A Yes. He was assigned to Building 22, A

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A-107

LEWIS - Direct

1 Tier, lower level, Cell 11, top bunk.

2 Q And between the dates of May 10th, 2004, and
3 June the 22nd, 2004, the same dates, can you tell me
4 the building, tier, and cell that Ralph Reed was
5 assigned to?

6 A Yes. Building 22, A Tier, lower level, 11
7 Cell, bottom bunk.

8 Q Does that mean that Jerome Reed and Ralph
9 Reed were there in the same building, the same tier,
10 the same cell, with Jerome Reed being on the top bunk
11 and Ralph Reed being on the bottom bunk?

12 A Yes.

13 Q And is that what your records indicate?

14 A Yes.

15 Q And do you have a summary of that that you
16 brought with you today that actually shows those
17 dates?

18 A Yes, I do.

19 Q Could I see that top page summary? Now, the
20 one you handed me is with respect to Ralph Reed,
21 correct?

22 A Yes.

23 Q Do you have one for Jerome Reed?

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

LEWIS - Direct

1 A Yes.

2 Q I just asked you the dates of, Ms. Lewis,
3 between May 10th, '04, and June 22nd, '04. Actually
4 with respect to Jerome Reed, do you have the date
5 that he was in that building, tier, and cell
6 beginning what date and ending what date?

7 A Beginning May 10, '04, and ending
8 February 22nd, '05.

9 Q And how about Ralph Reed? Do you have the
10 dates that he was in the 22 building, that tier, and
11 cell?

12 A That is September 17th, '03, and June 22nd
13 of '04.

14 Q So is there an overlap in those dates?

15 A Yes, that would be one month and twelve
16 days.

17 Q That they were in the same --

18 A Same cell together, yes, sir.

19 Q -- cell?

20 MR. ADKINS: Your Honor, I'm going to offer
21 these two summaries. I think there is an objection.

22 THE COURT: The objection is?

23 MR. RAMMUNO: Your Honor, these appear to be

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OFFICIAL COURT REPORTER

A-109

LEWIS - Direct

1 memos from Heidi Shrom to Michael Little, nothing to
2 do with this person. I mean they're hearsay,
3 obviously, because they're from somebody else. They
4 are not official records. I don't know if they are
5 official records of DCC or not. I think there would
6 be more official records than somebody from a memo.

7 MR. ADKINS: Your Honor, I am offering them
8 as a summary. She has her records in her folder, and
9 there is just certain records I believe she has to
10 take back with her. So we can copy everything in her
11 folder as far as I am concerned. She has records
12 with her. These are just summaries.

13 THE COURT: Why don't you let him see during
14 our next break the actual records, and if we have to,
15 if she is going to offer them as business records,
16 offer them, or if it is Rule 10 or 11 summaries can
17 be offered, but I will give counsel the opportunity
18 to look at that in a few minutes. If we have to take
19 a break before he examines her to look at that, we
20 can do that also.

21 BY MR. ADKINS:

22 Q Thank you. Do you have those records that I
23 am referring to there in your folder?

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

LEWIS - Direct

- 1 A Yes.
- 2 Q That support those summaries?
- 3 A Yes.
- 4 Q And do you maintain those records?
- 5 A Yes, I do.
- 6 Q And do you maintain them in the normal
- 7 course of your business?
- 8 A Yes, I do.
- 9 Q At the Department of Corrections?
- 10 A Yes, I do.
- 11 Q Is it your job to do so?
- 12 A Yes, it is.
- 13 THE COURT: Do the summaries actually
- 14 capture your records?
- 15 THE WITNESS: Yes, and the reason why Heidi
- 16 Shrom's name is on there is I am currently training
- 17 her to take my place whenever there is an absence.
- 18 She was asked to type that memo for me.
- 19 BY MR. ADKINS:
- 20 Q After she typed that memo for you, did you
- 21 search the records and confirm the accuracy of those
- 22 records and that summary?
- 23 A Yes. Yes. In fact, I found the records for

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

LEWIS - Cross

1 her. She typed the summary for me.

2 THE COURT: Cross, voir dire?

3 MR. RAMMUNO: Your Honor, I would like to
4 see the records, obviously.

5 THE COURT: All right. We will take a
6 break. Take a look at them.

7 (Whereupon, a brief recess was taken.)

8 THE COURT: Counsel, have you given the
9 Clerk the name?

10 MR. RAMMUNO: The only thing I have is what
11 I have given. I don't have any other name.

12 THE COURT: If you don't have a full name, I
13 can't help you.

14 Cross. Cross-examination?

15 CROSS-EXAMINATION

16 BY MR. RAMMUNO:

17 Q The record that you are relying on, that we
18 just saw, is basically a transfer list of the
19 individuals on a particular day, correct?

20 A Yes.

21 Q And the records that you have in your file
22 show the name of Ralph Reed, correct?

23 A Yes.

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A-102

LEWIS - Cross

1 Q But it doesn't show his correct SBI number?

2 A Correct.

3 Q What SBI number is associated to the Ralph
4 Reed that was transferred to Building 22, A Tier, 11,
5 top or bottom, I guess 11 bottom?

6 A The name that appears above him is the same
7 SBI number?

8 Q That is not my question. My question is
9 what SBI number appears next to Ralph Reed's name
10 that was transferred to Building 22, A Tier?

11 A The name that is above his is the SBI
12 number.

13 Q What is the number?

14 A 304503.

15 Q 304503. And what is Ralph Reed's SBI
16 number?

17 A 320813.

18 Q They are not the same SBI number, correct?

19 A Correct.

20 Q Do you know if there is more than one Ralph
21 Reed being held at the Delaware Correctional Center
22 between the months of May 10th of 2004 to June 22nd,
23 2004?

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A-103

LEWIS - Cross

1 A There is just one, just one.

2 Q And how do you know that?

3 A Because I maintain the records.

4 Q So you have all the records during that
5 period of time in front of you?

6 A No, I don't.

7 Q And the information that you are relying on
8 is not information that you, I guess, prepare
9 yourself?

10 A Yes.

11 Q You have not brought in a -- by the way, you
12 do maintain, I guess, data base for that computer,
13 correct?

14 A Yes, I do.

15 Q And that computer could tell you exactly
16 where everybody is housed at any given day, correct?

17 A Yes.

18 Q And that would be done on the computer
19 printout-type of situation?

20 A No. It's just kept in the data base. - We
21 don't need to print that information out. It's too
22 much.

23 Q Well, could you print out that information

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A-104

ZOLPER - Direct

1 Whereupon,

2 MATTHEW ZOLPER

3 was called as a witness by and on behalf of the State
4 of Delaware and, having been first duly sworn, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. ADKINS:

8 Q Officer Zolper, is it true that you are
9 employed by the Delaware State Police?

10 A Yes.

11 Q How long have you been with the Delaware
12 State Police?

13 A Since November of 1993.

14 Q And in what type of unit are you serving
15 with the Delaware State Police currently?

16 A Currently, I am assigned to the Delaware
17 State Police Troop 4 Youth Aid Unit.

18 Q And how long have you been doing that?

19 A I was assigned to the Youth Aid Unit in
20 August of 2003.

21 Q Prior to August 2003, what unit were you
22 with?

23 A I had served on patrol at Troop 7. I had

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A-106

ZOLPER - Direct

1 served in the Delaware State Police Special
2 Investigations Unit, and once again patrol at Troop
3 7.

4 Q The Delaware Special Investigations Unit,
5 does that deal basically with enforcement of the drug
6 laws and sort of drug enforcement unit?

7 A That's correct.

8 Q And do you know approximately what years you
9 were in that drug unit?

10 A Yes, I was a member of the Special
11 Investigations Unit from December of '96 until the
12 end of January '02.

13 Q So basically '96 through 2002?

14 A Yes, sir.

15 Q During that time period, did you work with
16 and assist and pass on information to the homicide
17 unit if you received any tips or leads about
18 homicides while you were in the drug unit?

19 A Yes. If we received any information, there
20 was a crime that we needed to investigate, two things
21 would happen. We would contact the unit and let our
22 XO, commanding officer, know, Lieutenant Donaway.

23 Q And being in that Special Investigations

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A-107

ZOLPER - Direct

1 Unit, that drug unit, did you have the opportunity to
2 work with confidential informants?

3 A Yes, I did.

4 Q Therefore, did you have the opportunity to
5 acquire and obtain leads on other cases other than
6 the drug cases, such as homicide cases?

7 A Yes, sir.

8 Q Do you know a person by the name of Jerome
9 Reed?

10 A Yes, sir.

11 Q Did he go by any nickname?

12 A Yes. He had a nickname that we would call
13 him Smiley sometimes.

14 Q In either November or December of 1999, did
15 Jerome Reed or the person known as Smiley ever come
16 to you and indicate that he had some kind of special
17 information on who did the shooting at a homicide
18 occurring November 23rd, 1999, at Little Creek
19 Apartments in Laurel, Sussex County, Delaware?

20 A No, he did not.

21 Q Did he ever come to you during that time
22 period and ask you to set up a meeting at JP Court
23 with the investigating officer on that particular

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A-108

ZOLPER - Direct

1 homicide?

2 A No, he did not.

3 Q In fact, by late November of '99, and into
4 December of '99, were you even using Jerome Reed --
5 well, had you made any determination as of
6 December 1999 as to whether you would even use him as
7 a reliable confidential informant?

8 A Yes. Myself and the Commanding Officer had
9 decided that in September of that year that we were
10 going to be finished, or I was going to be finished
11 using him as a confidential informant.

12 Q Did the falsely reporting conviction have
13 any impact on that decision?

14 A It did.

15 Q Okay. And in November and December of 1999,
16 was there anything special happening in your life
17 that took you away from work?

18 A There was.

19 Q What was that?

20 A My second child was born in October of '99.
21 My wife was high risk, and she had an emergency
22 surgery when she was pregnant, and we didn't know the
23 outcome, and I had finished in something of September

CHRISTINE L. QUINN
OFFICIAL COURT REPORTER

A-109

ZOLPER - Cross

1 that year leading right into that birth. I was not
2 able to take the time that I wanted and was
3 consequently allowed that time to take off, the end of
4 November and end of December.

5 Before the end of the calendar year, I took
6 several weeks from roughly the third week,
7 Thanksgiving, that time through Christmas, several
8 weeks off, that I normally didn't have because I had
9 missed the time off when my wife had the -- when we
10 had our second child in October.

11 MR. ADKINS: Thank you very much.

12 THE COURT: The question was did he ever
13 come to you? Did he call you, contact you? Did you
14 have any communication at all with him?

15 THE WITNESS: Jerome Reed would call the
16 office a lot. ✓

17 THE COURT: Did he call and talk to you
18 about any of these things that we just talked about?

19 THE WITNESS: No.

20 CROSS-EXAMINATION

21 BY MR. RAMMUNO:

22 Q How long had you been working with Jerome
23 Reed?

Adult
Complaint and Warrant
In the Justice of the Peace Court
In and for the State of Delaware
State of Delaware vs RALPH REED J

I, JAMES FRALEY (07129), of DELAWARE ST. POLICE HEADQUARTER do hereby state under oath or affirmation, to the best of my knowledge, information and belief that the above-named accused violated the law of the state of Delaware by committing criminal acts in Sussex county on or about the date(s) and at or about the location(s) as indicated in Exhibit A hereto attached and made a part hereof.

WHEREFORE, your affiant prays that the above named accused may be forthwith approached and held to answer to this complaint consisting of 2 charges, and to be further dealt with as the law directs

Det. J. P. Fraley 7129
Affiant

SWORN TO and subscribed before me this 24 day of November A.D., 1999

Wm. T. [Signature]
Judge/Master/Commissioner/Court Official

=====

(To be completed by Judge/Master/Commissioner/Court Official)
Jurisdiction resides in Family Court because: (Check and complete as required)

- A. ☐ The crime was committed by a child
B. ☐ A misdemeanor was committed against a child
C. ☐ A misdemeanor was committed by one family member against another family member
D. ☐ Other. Explain _____
- =====

WARRANT

TO ANY CONSTABLE or other authorized person:

WHEREAS, the foregoing complaint consisting of 2 charges, having been made, as listed in Exhibit A which is attached hereto and incorporated herein, and having determined that said complaint has been properly sworn to, and having found that there exists probable cause for the issuance of process, based upon the affidavit of probable cause which is attached hereto and incorporated herein as Exhibit B, you are hereby commanded in the name of the State of Delaware, to take RALPH REED J accused, and bring same before

JUSTICE OF THE PEACE COURT 03, FORTHWITH, to answer said charges.

GIVEN UNDER MY HAND, this 24 day of November, 1999

Wm. T. [Signature]
Judge/Master/Commissioner/Court Official

Warrant executed by FRALEY
Police Complaint No 0599041333

of 00 on 24 day of November, 1999.
WR:0099060573:WR

9911018706

Exhibit A

State of Delaware vs RALPH REED J

PS 99 4758

99-12-0398

Court Case: 9911018706

Complaint Number: 0599041333 Arrest Number: 20395 Charge Sequence: 001
Charge: MURDER FIRST DEGREE INTENTIONALLY CAUSED DEATH OF ANOTHER PERSON
In Violation of: 11-DE-0636-00a1-F-A
Location of Violation: CROCKETT STREET & W. 6TH STREEET L/O LAUREL, DE
TO WIT: RALPH REED J, on or about the 23rd day of November, 1999, in the
County of Sussex, State of Delaware, did intentionally cause the
death of GREGORY T HOWARD.

99-12-0399

Complaint Number: 0599041333 Arrest Number: 20395 Charge Sequence: 002
Charge: POSSESSION OF A FIREARM DURING THE COMMISSION OF A FELONY
In Violation of: 11-DE-1447-A00A-F-B
Location of Violation: CROCKETT STREET & W. 6TH STREEET L/O LAUREL, DE
TO WIT: RALPH REED J, on or about the 23rd day of November, 1999, in the
County of Sussex, State of Delaware, did possess a firearm during the
commission of the felony of MURDER 1ST

PS 99 4759

Exhibit B
Affidavit of Probable Cause

State of Delaware vs RALPH REED J

Also known as:

Date of birth: 12/18/1980

Sex: M

Eyes: BRO

Hair: BLK

Height: 604

Weight: 200

Accused's home add: 528 WEST 7TH STREET

:

: LAUREL, DE 19956

Accused's Home Ph : 3028752984

Accused's employer:

:

:

Accused's Emp Pho: 0

Accused's Work Hr:

Police Complaint: 0599041333

SBI Number: 00320813

Race: B

Accused's age: 18

Social Security Number 221625633

Driver's License DE - 1193373

Name, Home and Work Addresses, and
Telephone Numbers of Next of Kin
or Parent/Guardian

: ELDORA REED

: 528 WEST 7TH ST.

:

: LAUREL, DE 19956

Phone: 3028752984

Work :

:

:

Relation: Vict to accused: STRANGER

:

Victim's Age : 35

Victim's D.O.B. : 04/11/1964

Date(s) and time(s) of offense: 11/23/1999 22:30 thru 22:38

Location where offense occurred: CROCKETT STREET & W. 6TH STREET L/O LAUREL, D

Your affiant JAMES FRALEY can truly state that:

1. YOUR AFFIANT IS A DETECTIVE WITH THE DELAWARE STATE POLICE HOMICIDE UNIT AND HAS BEEN EMPLOYED BY DSP FOR OVER 15 YEARS.

2. ON TUESDAY (11-23-99) YOUR AFFIANT WAS ASSIGNED A SHOOTING COMPLAINT WHICH OCCURRED ON CROCKETT ST. & WEST 6TH STREET WITHIN THE TOWN LIMITS OF LAUREL, DE. THE INVESTIGATION SHOWED THAT THE INCIDENT TOOK PLACE ON TUESDAY (11-23-99) BETWEEN 2230-2238 HRS.

3. A WHITE MALE (VICTIM/GREGORY T. HOWARD) RECEIVED ONE GUN SHOT WOUND TO THE BACK OF THE HEAD. AFTER THE VICTIM WAS SHOT, HIS VEHICLE TRAVELED NORTH BOUND ON CROCKETT STREET AND CRASHED INTO A RESIDENCE ON WEST 7TH STREET. THE VICTIM WAS TAKEN TO NANTICOKE MEMORIAL HOSPITAL WHERE HE WAS PRONOUNCED DEAD AT 2332 HRS. BY DR. CHRIS ROBERTS.

4. AN AUTOPSY WAS PERFORMED ON WEDNESDAY (11-24-99) AT THE MEDICAL EXAMINERS OFFICE IN WILMINGTON BY DR. PEARLMAN. THE MANNER OF DEATH WAS RULED A HOMICIDE, AND THE CAUSE OF DEATH WAS A GUNSHOT WOUND OF THE HEAD.

5. A CRIME SCENE INVESTIGATION WAS CONDUCTED. (4) .380 CASINGS WERE FOUND NEAR A STOP SIGN AND THE ENTRANCE SIGN TO LITTLE CREEK APARTMENTS. WITNESS INTERVIEWS WERE ALSO CONDUCTED IN THE AREA OF LITTLE CREEK APARTMENTS.

6. A COOPERATING WITNESS STATED THAT SHE HEARD TIRE SCREELING AND LOOKED OUT FROM HER SECOND STORY APARTMENT. THIS WITNESS IDENTIFIED AND SHOWED YOUR AFFIANT THAT SHE HAS A DIRECT VIEW OF THE STOP SIGN AND LITTLE CREEK APARTMENT ENTRANCE SIGN, AS WELL AS A VIEW OF CROCKETT STREET. THIS WITNESS STATED THAT WHEN SHE OBSERVED DEF/REED STANDING BETWEEN THE STOP SIGN AND THE ENTRANCE SIGN AND FIRE 4 OR 5 SHOTS TOWARDS A VEHICLE. THIS WITNESS SAID THAT SHE IS POSITIVE IT WAS DEF/REED, BECAUSE THIS WITNESS HAS KNOWN REED FOR A NUMBER

Det. J. P. Fraley 7129
(Affiant)

(Judge-Master-Commissioner-Court Official)
Sworn to and subscribed before me
this 24 of November, 1999

Exhibit B

Statement of Probable Cause (Continued)

State of Delaware vs RALPH REED J

OF YEARS.

7. ANOTHER COOPERATING WITNESS WAS INTERVIEWED AND STATED THAT DEF/REED WAS SEEN IN THE AREA JUST BEFORE THE SHOOTING OCCURRED. THIS WITNESS KNOWS THE DEF/REED.

8. ANOTHER COOPERATING WITNESS WAS INTERVIEWED AND STATED DEF/REED WAS NEAR THE LITTLE CREEK DELI JUST BEFORE THE INCIDENT HAPPENED. LITTLE CREEK DELI IS APPROXIMATLEY 50 YARDS FROM THE STOP SIGN AND ENTRANCE SIGN TO LITTLE CREEK APARTMENTS.

9. ANOTHER COOPERATING WITNESS WAS INTERVIEWED AND STATED THAT ON TUESDAY (11-23-99) DEF/REED AND THIS WITNESS HAD WORDS. THE WITNESS OWED DEF/REED SOME MONEY. THIS WITNESS STATED THAT DEF/REED SHOWED HIS A FIREARM AND TOLD THE WITNESS THAT HE WANTED HIS MONEY. THE WITNESS STATED THE FIREARM WAS A .380 HANDGUN. YOUR AFFIANT ASKED THIS WITNESS HOW HE/SHE KNEW THE HANDGUN WAS A .380. THE WITNESS STATED HE/SHE IS FAMILIAR WITH THE .380 HANDGUN.

=====

Affiant:

JAMES FRALEY DELAWARE ST. POLICE HEADQUARTE Phone Work

Victims:

GREGORY T HOWARD

Det. J. P. Fraley 7129
Affiant

Sworn and subscribed before me this 24 day of November A.D. 1999

[Signature]
Judge/Master/Commissioner/Clerk Court Official



Delaware State Police/Homicide Unit
Continuation Sheet
Complaint #05-99-41333
Det. James P. Fraley #7129

3

INTERVIEW DEFENDANT

Ralph Reed Jr. BM-18 (12-18-80)
528 W. 7th Street
Laurel, DE
302-875-2974

On Wednesday (11-24-99) Def/Reed was taken into custody by uniformed members of the Delaware State Police at 1146 hrs. Def/Reed was placed into my vehicle and at 1147 hrs. I advised him of Miranda and he stated he understood. Sgt. Charles Brown was present during this. The defendant was taken to Laurel Police Department and was questioned by myself and Lt. Robert Hawkins. I advised the defendant of Miranda again and he stated he understood. Def/Reed denied being involved in the incident. Def/Reed gave a taped statement at 1409 hrs. See transcribed statement attached to this report. *While enroute to Troop 4, Def/Reed asked me why we picked him out. I advised Def/Reed again about witnesses who we interviewed. I then asked him what he did last night and if he was near the Little Creek Deli and where he slept. Def/Reed stated that he was hanging out in front of the Apartments with some friends, but would not say who they were. Def/Reed stated that around closing time he went to the deli and "Got some food from the woman", then went to his grandmother's house. Def/Reed went to his grandmother's house after he was in the deli and went to bed. I asked Def/Reed if he wanted to put this information on a taped statement and he said no. (See attached statement for details)

EXHIBIT B-1

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

THE STATE OF DELAWARE

vs.

RALPH REED, JR.
I.D. 9911018706

* CRIMINAL ACTION NOS.

* S99-12-0398 - 0399

*

*

*

*

INDICTMENT BY THE
GRAND JURY

*

*

PROthonotary
SUSSEX CO.

99 DEC 13 PM 2:33

FILED

The Grand Jury charges that RALPH REED, JR. did commit the following offense(s), to-wit:

COUNT 1 - MURDER IN THE FIRST DEGREE - S99-12-0398

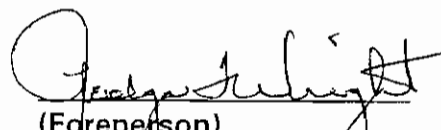
RALPH REED, JR. on or about the 23rd day of November, 1999, in the County of Sussex, State of Delaware, did intentionally cause the death of Gregory T. Howard by shooting him with a gun, in violation of Title 11, Section 636(a)(1) of the Delaware Code.

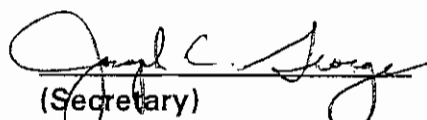
COUNT 2 - POSSESSION OF A FIREARM DURING THE COMMISSION OF

A FELONY - S99-12-0399

RALPH REED, JR. on or about the 23rd day of November, 1999, in the County of Sussex, State of Delaware, did knowingly possess a firearm during the commission of a felony by possessing a handgun, during the commission of Murder in the First Degree as set forth in Count One of this Indictment which is herein incorporated by reference, in violation of Title 11, Section 1447A(a) of the Delaware Code.

A TRUE BILL


(Foreperson)


(Secretary)

s/M. JANE BRADY
ATTORNEY GENERAL


DEPUTY ATTORNEY GENERAL

DATE: DECEMBER 13, 1999

jj

1 after they check it. All right.

2 Last week we had a discussion. The State
3 came forward concerning potential 404(b) evidence and
4 I have had an opportunity to look at 404(b) Getz, some
5 of the Getz case law and also the DeShields, which is
6 Getz case law impacting on the prejudice potential.
7 The testimony kind of breaks down into three areas.
8 You all can correct me if I'm wrong. As I broke it
9 down and understood it, one area concerned the State's
10 efforts to put a pistol or a gun in the possession of
11 the defendant the day of the offense. And the
12 allegations or the proffer is that the State has a
13 witness that would say that a confrontation took place
14 in the morning concerning a quality issue of marijuana
15 or some issue of marijuana that was allegedly sold by
16 the defendant to that witness. There was some
17 discussions and there was a display of what appeared
18 to be a .380 and that the witness was able to
19 differentiate. Number one, the witness can testify it
20 was a pistol. And, number two, the witness thought it
21 was a .380 based upon the witness picking out a .380
22 at the police station or recognizing what a .380 looked
23 like. As to that, depending on the circumstances, the

DAVID WASHINGTON
Official Court Reporter

To A-163.

1 usage of the gun which we talked about last week, it
2 is not illegal to possess a gun. It is illegal to
3 possess a gun under some circumstances wherein the gun
4 may be concealed. The concerns that I have are
5 basically the prejudicial aspect. I am satisfied that
6 the gun in the incident in the morning is material
7 because the gun was not recovered and the State is
8 trying to tie a .380, which had casings at the scene,
9 to the defendant and to the defendant's possession of
10 a gun. Identification linkage is one of the more
11 important aspects: MIMIC: Motive, intent, mistake,
12 or lack of identity and common scheme were the
13 standard, but this is exclusive, but these are one of
14 the classics and there is identification linkage. The
15 State proffered that they will have live testimony
16 under oath as to this and I think it meets the clear
17 and convincing evidence test. Based upon the proffer,
18 it's not remote in time. A limiting caution will be
19 given.

20 Here is the problem: What you have is, if
21 you go into the entire incident in the morning, if you
22 go into the entire incident in the morning based on
23 the proffer, I think there is a lot of potential

DAVID WASHINGTON
Official Court Reporter

Tr A-164

1 prejudice when I look at the DeShields' case. The
2 testimony would basically paint the defendant as a
3 hoodlum, as intimidating. And I think the testimony
4 for purposes of identification is that that testimony
5 can be restricted and limited to the fact that the
6 witness can testify as to seeing the weapon, seeing
7 the defendant with the weapon, but the witness doesn't
8 have to get into the circumstances of the
9 intimidation, the bullying, and the disputes which
10 could raise the prejudice potential significantly. So
11 I think the State is going to have to spend some time
12 with that witness, whoever that person is, and
13 restricting it as to the circumstances as to -- that
14 he saw the weapon on the defendant, when he saw the
15 defendant with the weapon and restrict it to that.

16 I don't think you need to go into the other
17 portions of it. If you want a clearer proffer as to
18 what this witness will testify to, if you want to have
19 a dry run out of the presence of the jury, then ask
20 what you want to have and have not, you can do that.
21 But I don't have his testimony in front of me and I
22 only have the proffer. And I am concerned, I think
23 you used the example: He pulled his jacket back and

DAVID WASHINGTON
Official Court Reporter

TC A-165

1 ~~made some kind of intimidation action and the use of~~
2 ~~this gun in an intimidating manner.~~ What you are
3 doing is you are not using it for purposes of
4 identification. You are using it to show: Hey, this
5 guy is a hood, a bully, and he is intimidating and he
6 is threatening.

7 As to the use of the witnesses concerning
8 this defendant as a drug dealer, we have two
9 breakdowns. One is that -- I don't know how many
10 witnesses there are, whether it is just one or two
11 that observed -- maybe there was more that observed
12 what was happening just before the shooting. And
13 there are drug overtones, drug transaction overtones
14 to that. Then the second is: The events that took
15 place prior to the alleged confrontation between the
16 defendant and the victim which paint -- potentially
17 paint the defendant as a drug dealer. So they need to
18 be looked at separately. I think the events
19 immediately before are inextricably intertwined as in
20 Pope, but as Pope tells us, you always do a 404(b)-and
21 see if it fits. It is material. It is material as to
22 why somebody shouted out "flammed". It fits into the
23 MIMIC criteria under 2 of Getz: The motive for the

DAVID WASHINGTON
Official Court Reporter

TC A-166

1 shooting. There will be live testimony based on the
2 proffer, which will be tested by cross-examination
3 under oath. The acts are clearly not remote. A
4 curative can be given. Nothing on this aspect. Yes,
5 it paints -- this type of testimony paints the
6 defendant as being a drug dealer, which is a prior bad
7 act. There is nothing under the DeShields' criteria
8 when I looked at it, although the criteria that jumps
9 out, like the prior issue jumps out, this is part of
10 the State's case and it is an element -- excuse me,
11 not an element, but it is a critical part of the
12 State's case. If you take that away, I think there is
13 a void in the State's case. So the jury needs to
14 understand that.

15 Now, the question of Mr. Adkins: How many
16 witnesses do you have that paint the scene, paint the
17 defendant as being a drug seller at the scene just
18 prior to the shooting? In other words, the people
19 that were seeing what was going down with the
20 defendant and the victim? I know there was one. I
21 didn't know how many.

22 MR. ADKINS: Your Honor, as part and parcel
23 of this incident, in terms of the handed drugs,

1 squealing tires, shots fired, and drug transactions,
2 we have definitely one. And, you know, it's just
3 there are others that may talk about he is there
4 hanging out at the entrance way. He approached this
5 other vehicle, they will describe, just before this
6 Bronco came up. And he went to the window and saw him
7 go up to the window of this Bronco. And, you know,
8 they aren't two feet away from him. They can't swear
9 that he handed drugs, but they know him as hanging out
10 at that entrance way and selling drugs. I mean, we
11 have probably got eight or nine people that are going
12 to be on the stand, not for that reason, but for other
13 reasons, who, when asked in our interview: Do you
14 know Ralph? Yep. Did he sell drugs? Yep. Does he
15 sell them out there at Little Creek? Yep.

16 THE COURT: I don't want eight or nine
17 witnesses painting him as a drug dealer because I
18 think that is overkill and you don't need that. I
19 think what we need to do is this -- I presumed that.
20 May be I am wrongly presuming. Mr. Adkins, the
21 initial witnesses concerning the sale of drugs will be
22 the witnesses of the event, the flammings, the
23 screaming tires?

DAVID WASHINGTON
Official Court Reporter

T.A.-168

1 MR. ADKINS: We have one, I feel, solid
2 witness as to the event. And the lines get real fuzzy
3 in this, Your Honor. We have a witness who will talk
4 about -- well, I'm not sure. One witness who will
5 talk about the victim circling this area for probably
6 30 minutes that night, about the victim coming to this
7 area for two to three weeks, two or three times per
8 week, and at times asking this witness where is Ralph,
9 he hooked me up with Ralph. We have the victim that
10 night going to another witness this very night of the
11 incident, looking for drugs. That witness tells our
12 victim: I don't have any. And within 30 minutes or
13 less, the incident is happening with Ralph. We have a
14 person who has seen Ralph deliver drugs to the victim
15 during that two week period prior.

16 THE COURT: Well, that's three witnesses.
17 What I am saying, we don't need eight. You told me
18 three critical witnesses I think I have. I am going
19 to allow those three witnesses, the testimony as to
20 those three witnesses because I think that lays the
21 foundation. I am going to allow it in the State's
22 case in chief. I am not allowing any more than that.
23 You have that and the witnesses at the particular

DAVID WASHINGTON
Official Court Reporter

Tr. A-169

1 time. And if you want to call -- if it becomes a
2 major issue after the defense has decided what he may
3 or may not put on, then there may be an application
4 for rebuttal witnesses on that. In other words, what
5 you are trying to do is set the stage so that you do
6 not have the jury hearing something in a vacuum, what
7 took place three minutes before the shooting and start
8 there. And I understand that based upon the
9 allegation, I am going to allow that.

10 All right. Anything else that anybody wants
11 to comment on?

12 MR. HALLER: I just want to object to your
13 ruling. I don't object to the intertwined part that
14 you were commenting, but about the prior days, I
15 object to your ruling in that respect.

16 Now, on other things, on the scheduling, can
17 you tell us more about scheduling, when we are
18 beginning normally and when we are going to end?

19 THE COURT: Well, I am giving this court
20 reporter a break. He is scheduled all day on this. I
21 will ask him that as soon as he is ready, we will get
22 started. Then we will go with openings. Then break
23 for lunch. And I suspect your opening will take us to

1 The firing of it into the air shouldn't come in
2 because that is illegal. So I object to all of those
3 aspects of that scenario that Mr. Adkins has painted
4 so far.

5 THE COURT: As to those, I am going to allow
6 the testimony on that. The criminal activity, I know
7 even with two attorneys here and a Judge, I don't know
8 what all the gun registration requirements are. It
9 probably sounds like something, you know, that there
10 should be some registration process, but I don't know
11 to private citizens, to sell to a private citizen
12 without registering, I don't know, I don't know if
13 that's a crime. It may or may not be. We don't have
14 a handgun law like Baltimore City has where you can,
15 to possess a handgun, you have it registered and
16 requiring registration of all handguns. I'm not sure
17 even if it is under the same analysis that I made.

18 On the identification factor, it all fits in
19 and the prejudice, I think, for that allegations of
20 potential prior bad conduct coming in, it's minimal.
21 The State is trying to place a functional .380 in the
22 defendant's possession. So I am going to allow that
23 testimony.

DAVID WASHINGTON
Official Court Reporter

A-55

To A-171

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RALPH REED,

§

§

Defendant Below,
Appellant,

§

§ No. 44, 2001

§

v.

§ Court Below: Superior Court

§ of the State of Delaware in and

STATE OF DELAWARE,

§ for Sussex County

§ Cr.A. Nos. IS99-12-0398

Plaintiff Below,
Appellee.

§ through 0399

§

Submitted: July 10, 2001

Decided: July 12, 2001

Before WALSH, BERGER, and STEELE, Justices.

ORDER

This 12th day of July 2001, upon consideration of the briefs of the parties, it appears to the Court that:

(1) This is an appeal from a conviction in the Superior Court following a jury trial. The appellant, Ralph Reed, Jr. ("Reed"), was convicted of murder first degree and possession of a firearm during the commission of a felony for the fatal shooting of Gregory Howard on November 23, 1999.

(2) In this appeal, Reed asserts two claims of error: (i) that the trial court abused its discretion in admitting evidence that on prior occasions he had discharged a handgun and had been involved in drug dealing and (ii) that the court gave an

Karl Haller
PUBLIC DEFENDER'S OFFICE
14 THE CIRCLE AND FLOCHAM
GEORGETOWN, DE 19847
MR REED, HERE IS THE ORDER OF THE SUPREME COURT. 7/13 2001 SET
AGAINST THEM HAVE PUT AGAINST US.